TAN

Biennial Report

OF THE

Attorney General

OF THE

State of Colorado

Years 1913 and 1914

FRED FARRAR
Attorney General

DENVER, COLORADO
THE SMITH-BROOKS PRINTING COMPANY, STATE PRINTERS
1914

ATTORNEYS GENERAL OF COLORADO

FROM THE ORGANIZATION OF THE STATE

A. J. Sampson	1877-1878
Charles W. Wright	1879-1880
Charles H. Toll	1881-1882
David F. Urmy	1883-1884
Theodore H. Thomas	1885-1886
Alvin Marsh	1887-1888
Samuel W. Jones	1889-1890
Joseph H. Maupin	1891-1892
Eugene Engley	1893-1894
Byron L. Carr	1895-1898
D. M. Campbell	1899-1900
Charles C. Post	1901-1902
Nathan C. Miller	1903-1906
William H. Dickson	1907-1908
John T. Barnett	1909-1910
Benjamin Griffith	1911-1912
Fred Farrar, (re-elected Nov. 3, 1914)	1913-1916

ATTORNEY GENERAL'S OFFICE.

Fred Farrar.....Attorney General
Francis E. Bouck.....Deputy Attorney General
Frank C. West.....Assistant Attornev General
Norton Montgomery.....Assistant Attorney General
Wendell Stephens.....Assistant Attorney General
Clement F. Crowley.....Assistant Attorney General
Margaret E. Fallon.....Stenographer
Helen Cuthbertson.....Stenographer
Pauline Hughes.....Stenographer

INHERITANCE TAX DEPARTMENT.

Leslie E. Hubbard.....
..Inheritance Tax Appraiser and Assistant Attorney General
Edwin L. McCulloch, Leo U. Guggenheim .....Deputy Inheritance Tax Appraisers
Edith Mary Stewart.....Clerk and Stenographer

Biennial Report

of the

Attorney General

of the

State of Colorado

His Excellency,

ELIAS M. AMMONS,

Governor of the State of Colorado.

Sir: Pursuant to law, I beg to submit herewith a report of the work of this department for the period commencing with the 14th day of January, 1913, and ending the 30th day of November, 1914, and, in making this report, it seems to me unnecessary to give a detailed statement of the numerous cases prosecuted or defended by my department.

The usual heavy work of the attorney general's department has been augmented during this biennial period to a very large extent. In the first place, there were many questions arising out of or in connection with the new constitutional powers adopted by the people at the general election of 1912, and the measures adopted by the people by virtue of the initiative and referendum at that same election. These measures cover subjects of home rule for cities and towns, recall from office, recall of decisions, civil service, headless ballot, the eight-hour law for certain classes of labor, the eight-hour law for women, and the so-called mothers' compensation act. In addition to these, several radical changes in our statutes were made by the nineteenth general assembly, not the least of which are the laws designed to secure a full cash valuation of all taxable property in the state for the purpose of taxation. Furthermore, the interstate water suits and the coal miners' strike have added a very large amount of work to the office, so that I can truthfully say that never before has there been such a strenuous administration nor such an enormous amount of work in addition to the ordinary or routine business of the office.

It may be of interest to treat somewhat definitely the more important of the various phases of the work.

CRIMINAL PROSECUTIONS.

Cases on writ of error from the Supreme Court of this state to the various trial courts, involving criminal prosecutions, are handled on behalf of the people by the attorney general. There has been the usual grist of these, including all sorts of crimes, to which it would seem unnecessary to make specific reference. One of these criminal cases has been taken by writ of error to the Supreme Court of the United States, where it is now pending.

TAX QUESTIONS.

For many years the state had felt the need of securing some relief from the intolerable condition which had grown out of the practice of valuing property for taxation purposes at less than its full value. This practice finally resulted in local property in many counties being assessed as low as twenty-five per cent of its full cash value, with the consequent increase in the local levies, that is, for county, city, school district and similar purposes. There was naturally a concurrent loss of a large percentage of the revenue of the state because of the lack of flexibility in the state levy, there being a constitutional limitation of four mills for ordinary state purposes. Moreover, there was the lack of uniformity in valuations between the various counties, and also between the counties and the public utilities having a continuity of business in two or more counties, these public utilities being assessed by the state board of equalization until the creation of the tax commission in 1913, and after that by that latter body. This complex and chaotic situation demanded, and finally resulted in, the laws enacted by the nineteenth general assembly placing a limit upon the levies which might be made for all purposes, and providing a new method relative to the taxation of mines.

Prior to the enactment of these laws, the work of the tax commission had been, at best, ineffectual, but in 1913 their report to the state board of equalization recommending blanket raises upon many counties of the state produced a new condition in matters pertaining to taxation and brought up many new questions, of which the most important was the power of the tax commission to compel the assessors to make blanket raises on all local valuations within their counties. Under the established law of this state, as announced primarily in the case of People ex rel. Crawford vs. Lothrop, 3 Colo., 428, construing our constitutional provisions, the matter of equalization between individuals is solely within the jurisdiction of the county board of equalization, with a limitation to the effect that the county board can not change the aggregate value of the county as returned by the

assessor, and that the jurisdiction of the state board of equalization is solely a question of equalizing between the counties, treating the valuation of each county as an entirety and maintaining the aggregate valuation of the state shown by the assessment rolls as returned to the state board. In other words, the state board of equalization was required to maintain the aggregate value, and, in order to equalize, would have to add to some county or counties any amount which might be deducted from any other county or counties and vice versa.

The state board of equalization approved the report of the Colorado tax commission in October of 1913 and ordered the blanket raise recommended by the tax commission. It was contended that this was a violation of the constitution in that it changed the aggregate value of the state, also that the tax commission had no authority to control local appraisements made by the assessors, they being constitutional officers. The assessor of the City and County of Denver refused to make the raise and other assessors awaited the outcome of the suit which was brought against him. This case was The People of the State of Colorado ex rel. The Colorado Tax Commission vs. Pitcher, 56 Colo., 343. In that proceeding the Supreme Court, by divided vote, sustained the action of the tax commission and the state board of equalization, holding in effect that the Colorado tax commission had powers of original assessment, and that its report to the state board of equalization fixed the aggregate value of the state.

I am glad to note that a constitutional amendment was adopted by the people of this state at the last general election, that is, November 3, 1914, which will, in the future, permit county boards of equalization to change the aggregate value returned to them by the assessor and which will permit the state board of equalization to change the aggregate value of the state as returned to this board. It must be borne in mind, however, that the state board of equalization will still have to deal with the valuations of counties as entireties and the duty of equalizing local property valuations, that is, equalizing between individuals, must be performed by the county boards of equalization just as heretofore. If this duty were properly performed, either by the assessor in his original valuation, or by the county board of equalization, there would be very little difficulty arising from any raise which might be made by the tax commission on the county as a whole. It will readily be seen that the desirable thing in taxation is to secure uniformity of values. The tax itself depends upon the amount of money which it is necessary to raise, and it makes no difference whether the property of an individual be assessed at fifty per cent or two hundred per cent of its actual cash value if all other properties are assessed upon the same standard. If all the property in a county is assessed at less than its cash value, but upon the same relative standard, a blanket raise designed to bring the county up to the same standard of value as all other

counties will work no hardship upon the individuals. If, on the other hand, one individual is assessed at one hundred per cent, another at fifty per cent, there is an injustice done, and the relative valuations will be the same under the original appraisement and also under any appraisement made pursuant to a blanket or uniform raise on the whole county.

There has been much criticism directed toward the state tax commission. There will always be criticisms of taxing officers as long as taxation exists, and, after all is said and done, the question of value is a question of judgment subject to all the limitations and inaccuracies of human judgment. Had all the assessors of the state co-operated with the tax commission in an effort to arrive at the same standard of values, much of the trouble and the consequent irritation would have been eliminated. Most of the assessors of the state earnestly endeavored to perform this duty. A few, either because of the difference in judgment existing between them and the tax commission or for other reasons, refused to move in the matter until the Pitcher suit above mentioned was decided, with the result that there has been considerable confusion in their counties and a delay in the collection of revenues.

The plan of the Colorado tax commission is by no means perfect, but, in my judgment, it is a step in the right direction and should ultimately, if given a fair trial, with amendments which will suggest themselves from time to time, result in a much more satisfactory system than that of the past. The idea should not prevail that the problem is a new one. It has existed in one form or another since the territorial days.

I have given the subject much thought, and it has been the cause of numerous cases during my administration, and I venture the suggestion that the problem might be solved, possibly not perfectly, but at any rate much more satisfactorily, by the adoption of a plan whereby the office of county assessor would be abolished and the jurisdiction to make appraisement of all taxable property in the state be placed in one central body; this body to be denied any right whatsoever to make or suggest any levy; let the levies be entirely within the control of the present existing bodies or similar bodies organized by law. In that way I believe uniform values could be secured, but the question of the amount of the tax would be left solely to the jurisdiction of the taxing authorities for the state and the various subdivisions of the state.

INTERSTATE IRRIGATION QUESTIONS.

By far the most important matters of litigation which the department has had to handle are the interstate irrigation questions, of which there are four.

The first one is the suit brought by the United States Irrigation Company, the owner of certain irrigation projects near

Garden City, Kansas, to enjoin the users of water on the Arkansas River from diverting water until 350 cubic feet per second of time is supplied to the ditches of the plaintiff. This case is pending before the United States District Court and evidence is being taken before a special master. As originally commenced, the case was brought against the state engineer, division engineer and the water commissioners of the various districts along the Arkansas valley, but a demurrer was sustained in behalf of the official defendants. The case had been in progress for some time before my inauguration. The defense is being directly handled by the attorneys for The Arkansas Valley Ditch Association, they being Honorable Platt Rogers, Mr. Henry A. Dubbs and Mr. Fred A. Sabin. The plaintiff rested in October last and the evidence for the defense will be introduced as rapidly as possible. I have been in frequent consultation with the attorneys and directors of the association and have borne practically all of the cost of the case, excepting attorneys' fees, since I received an appropriation for this work.

The second case is that of Wyoming vs. Colorado on original jurisdiction in the Supreme Court of the United States. Wyoming seeks to restrain the diversion of water by means of the tunnel, forming a part of The Greeley Poudre Irrigation District's system, from the Laramie River into the Poudre. In October, 1912, a demurrer filed in behalf of the State of Colorado was, by the Supreme Court of the United States, overruled without prejudice, and ninety days given within which to answer. Inasmuch as the time for the answer would expire exactly one week after my inauguration, in conjunction with the counsel for The Greeley Poudre Irrigation District, Mr. Charles F. Tew and Mr. Delph E. Carpenter, and counsel for The Laramie Poudre Reservoirs & Irrigation Company (the construction company), Honorable Julius C. Gunter, I prepared the answer, and, pursuant to the practice of the Supreme Court of the United States, obtained leave to and did file the same early in January and before my inauguration. The preparation for the defense of this case was undertaken immediately, inasmuch as the State of Wyoming was urging immediate trial. In May, 1913, I appeared with the attorney general of Wyoming, Honorable Douglas A. Preston, before the Supreme Court and procured an order dispensing with the services of a special master, stipulating that the stenographers who reported the testimony might act, without additional compensation, as masters, the order appointing the Honorable Clyde M. Watts of Cheyenne reporter and master for the evidence introduced by the State of Wyoming and the Honorable Newton C. Garbutt of Denver reporter and master for the evidence introduced by Colorado. The taking of testimony was commenced at Cheyenne, Wyoming, on August 18, 1913, and continued, sessions being held at various places both in Wyoming and Colorado, until May 23, 1914. The evidence is very voluminous, and, in addition to nine volumes of approximately five hundred pages

each in the transcript itself, there are something more than two hundred exhibits, some of them being volumes in themselves. The abstract of the testimony is now being prepared and the case will be pushed to as rapid a conclusion as possible. Needless to say, the enormous amount of evidence requires considerable time and patience to abstract properly if the court is to receive it in any satisfactory form.

The next case is The Pioneer Irrigation Company vs. John E. Field, as State Engineer, et al., wherein the appropriators of water in the State of Nebraska seek to enjoin the use of water by appropriators in Colorado. The stream involved is the North Fork of the Republican River. A motion to dismiss, tantamount to a demurrer on behalf of the official defendants, was denied. An answer was filed in due time and engineering and hydrographic data obtained. The case came on for trial in December, 1914, with a decision favorable to the majority of the defendants but unfavorable to two or three and unfavorable indeed to the position of the State of Colorado as a whole. An appeal is being perfected and will be prosecuted to its ultimate conclusion.

The next matter is not in litigation. It is the question involved in the order of the Department of the Interior prohibiting the construction of ditches or reservoirs on the public domain or the forest reserves for the diversion or impounding of water from the Rio Grande River. Several conferences have been held with the United States authorities, two of them being with the Secretary of the Interior, Honorable Franklin K. Lane. The prohibition mentioned exists because of the fact that the reclamation service of the United States government is constructing in southern New Mexico an enormous reservoir for the storage of water for irrigation, commonly known as the Engle or Elephant Butte Reservoir. This reservoir—if completed as designed—will impound 2,760,000 acre feet of water. The United States government, by treaty, has agreed to supply, at the head of a ditch near the city of El Paso, Texas, 60,000 acre feet for use in old Mexico. The remainder of the water is intended for the irrigation of a reclamation service project lying below the dam, including 45,000 acres in the State of Texas and 110,000 acres in New Mexico. In connection with the state engineer, Mr. John E. Field, I made a personal trip of inspection up and down the Rio Grande River to a point below irrigation, some fifty miles below the city of El Paso, Texas. Hydrographic and engineering data have been and are now being gathered in order to ascertain the facts concerning this river and the flow of water. It is contended on behalf of Colorado that the use of water in the San Luis Valley would in no wise prejudice the United States government or any persons interested in this reclamation project. Furthermore, we believe that the government is entirely beyond its legal rights in denying the State of Colorado the use of this water. This is particularly emphasized when one realizes that the storage capacity of the reservoir is many times the amount which will be

required to supply the 60,000 acre feet to be given to Mexico and also irrigate 155,000 acres of land. We endeavored to get the government to submit to the jurisdiction of the United States courts in order that the legal phases of the question might be determined, but without avail. The suggestion has been made by the Secretary of the Interior that a commission of three be appointed, one by the government, more particularly by the Reclamation Service, as I understand it, one by the State of Colorado, and the third to be chosen by these two. As you are aware, I was unable to agree to this plan for the reason that neither the law of the United States nor the law of the State of Colorado could be determined by such a commission, nor would its findings do more than establish a rule for administrative action. The work of gathering data will be continued. In the meantime, the United States government, through its geological survey, and also through the Reclamation Service, has been gathering data, making stream measurements, etc., but I regret to state that a portion of these records which we know to be favorable to the contention of the State of Colorado from a practical standpoint are being suppressed.

In the same connection I may add that I have felt it imperative to preserve, in some form, evidence of the early pioneers as to the condition of the flow of the Platte River in the early days before irrigation was practiced, or at any rate, before it became extensive. I received, from various sources, intimations that agitation was rife in the State of Nebraska leading to a suit by that state to enjoin the use of water in Colorado. I did what was possible to gather this evidence and preserve it. Further information will be gathered along the same and other lines, not only in Colorado, but also in the State of Nebraska.

The Nineteenth General Assembly gave me an appropriation of $50,000.00 for these interstate questions. I wish to say emphatically that not one cent of this appropriation has been used, directly or indirectly, for attorneys' fees. Where there has been actual litigation I have required of the local ditches interested the appointment of counsel to co-operate with me in behalf of the state in the defense. This has been done in each instance. I need not state that litigation of this kind is, of necessity, extremely expensive. The size of each case is enormous compared with any ordinary litigation. The amounts which have been spent on the various suits or projects are as follows:

Arkansas Valley suit	$19,011.20
Wyoming-Colorado suit	16,174.61
Republican River suit	1,674.75
Rio Grande investigation	994.60
Platte River investigation	462.32

This leaves, at the end of the fiscal year, unexpended of the $50,000.00 appropriation, a balance of $11,682.52.

THE COAL MINERS' STRIKE.

The strike of the union coal miners which was called in September, 1913, resulting in the use of the militia of the state in several counties, has entailed an extraordinary amount of work. After the militia had been withdrawn, and pursuant to directions given by Your Excellency, this department undertook the prosecution of crimes of violence arising out of said strike. I am at the present time, in co-operation with the district attorney, engaged in the prosecution of cases in Fremont County; a grand jury in that county returning indictments against ninety-three for murder, arson and similar offenses. I have been in co-operation with the district attorney in Boulder County, where a grand jury also returned a number of indictments on like charges. During the summer, either in person or by one of my assistants, I worked with the grand jury in Las Animas County, with the result that one hundred and sixty-five have been indicted in that county. These indictments will be followed up with the prosecution of the cases by this department. Similarly, I worked with a grand jury in Huerfano County, where a number of indictments have also been returned, and these will also be followed by prosecutions. In the counties of Las Animas and Huerfano I have proceeded without the co-operation of the district attorney. This procedure is unusual, but the legality of it is sustained by the statutes and by the decisions of the Supreme Court of this state. In the event, however, that this extraordinary work is to be continued, I will be required to have some extra assistance in the office, inasmuch as I cannot do the routine work and attend to the prosecution of these cases as well, with the present force.

INHERITANCE TAX.

The Nineteenth General Assembly amended the law relative to inheritance taxes and the method of collection, providing for one inheritance tax appraiser, who should be an assistant attorney general, and two deputy appraisers. The change has been highly beneficial. Under the old plan there were three districts in the state, with an appraiser for each district. The result was that there was no concerted action and all legal questions required the attention of some member of the attorney general's department. Under the present plan the appraiser handles the legal questions and is responsible for the conduct of the deputies, and a much larger revenue has been derived from inheritance taxes at considerably less expense to the state. I wish to commend most highly the able work done by Mr. Leslie E. Hubbard, Inheritance Tax Appraiser, and his two deputies, Mr. Edwin L. McCulloch and Mr. Leo U. Guggenheim. The report of the inheritance tax department is transmitted herewith.

CONCLUSION.

In conclusion, I wish to state that there are many things of interest which might be reported, but which space will not permit. Likewise, only a small percentage of the opinions sent out from this office can be printed with my report. I cannot close, however, without expressing my appreciation to you and to the other officers of the state for many courtesies extended to this department, and I desire to commend most highly the loyalty and ability given the public service by the members of my department. These are Mr. Francis E. Bouck, Deputy Attorney General; Mr. Frank C. West, Mr. Norton Montgomery, Mr. Wendell Stephens and Mr. Clement F. Crowley, Assistants; and the clerical force, consisting of Miss Margaret E. Fallon, Miss Helen Cuthbertson, Miss Pauline Hughes and Miss Edith Mary Stewart.

Respectfully submitted,

FRED FARRAR,
Attorney General.

Report of

Inheritance Tax Department

Hon. Fred Farrar,
Attorney General,
State of Colorado.

Sir: I hand you herewith a report of the Inheritance Tax Department, covering receipts, disbursements, tax assessed and outstanding, and all other work appertaining to the department, for the fiscal years 1913-1914.

RECEIPTS AND DISBURSEMENTS.

RECEIPTS.

1913	$141,874.47	
1914	323,188.55	
		$465,063.02

DISBURSEMENTS.

1913	$ 8,043.22	
1914	11,040.70	
		$ 19,083.92

EXPENSE—COMPARISON OF.

The expense of the department, including salaries, on collections actually made is 4.1%. The expense of the department, not including salaries, based on collections actually made, is 1.29%. We have reduced the cost of collection from 8.09% in 1909-10 and 5.47% in 1911-12 to 4.1%.

The expense shown above is divided $13,046.45 for salaries of appraiser, deputies, stenographer and clerk and $6,037.47 for traveling and hotel expenses of appraiser and deputies, witness fees, printing, postage, stationery, telephone and telegraph and incidental office expense.

STATEMENT OF WORK, 1913-1914.

Collections, 1913-1914	$465,063.02	
Tax on fifty estates, appraised and in process of settlement.	39,776.24	
	$504,839.26	
Fees from 150 estates uncollected (estimated)	1,000.00	
Tax from estates partially figured and estimated, probably determined in December, 1914 (estimated)	50,000.00	
		$555,839.26

AMOUNT OF WORK, 1913-1914.

1913-1914 tax collected from estates	478	
1913-1914 waiver fees collected from estates	1,618	
	2,096	
1913-1914 estates assessed and calculated	50	
1913-1914 estates ready for waiver	150	
Total		2,296

COMPARISON OF WORK.

1902-1912 taxes collected from estates	768	
1902-1912 waivers issued	868	
Total	1,636	
Number of estates handled in 1913-1914, more than in ten years, 1902-1912	660	
		2,296

SYSTEM AND RESULTS.

We have installed a complete uniform system of filing, indexing, recording and checking and our blanks are the simplest and best used by any inheritance tax department in the country.

We have handled and disposed of more estates in twenty-four months than were disposed of in the ten years between 1902-1912, and have collected more money than was ever collected in a biennial period.

We have endeavored to conduct the department with courtesy, honesty, efficiency and economy, and the results obtained convince me that business methods can be successfully applied to the conduct of state affairs.

RECOMMENDATIONS.

I desire to commend my two deputies and one stenographer for their faithful and untiring efforts to handle the large volume of business in the office and make the work of the department a success.

There are many suggestions which I have to make with reference to the law, but prefer to discuss them with you personally when opportunity permits.

I desire to congratulate you on the record of the office and to thank you for the many courtesies extended to me.

Very sincerely,

Leslie E. Hubbard,
Inheritance Tax Appraiser.

APPENDIX

Opinions Rendered During the First Term of Attorney General Farrar

(January 17, 1913.)

Expenses of county delegates to a good-roads convention are not legally payable from the county treasury.

Mr. David P. Howard,
Hot Sulphur Springs,
Colorado.

Dear Sir: You have submitted the question whether the necessary traveling expenses of a delegate from your County to a Good Roads Convention, can be legally paid out of your County Treasury.

While the objects and purposes of such conventions as that you mention are exceedingly commendable and deserve the support of all public spirited citizens having at heart the material interests of our State, it is my opinion that under the existing laws there is no power in the Board of County Commissioners in our State to allow the claim of one of its members or any other person on account of expenses incurred as a delegate to a convention such as you have in mind.

It follows that the expense involved in such service must be borne by private contributions.

Yours very truly,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(January 27, 1913.)

The item of $115,355.84 in Sec. 36 of the 1913 Short Appropriation Bill, "for the publication of Constitutional Amendments, Initiated and Referred Bills", is a valid first class appropriation, such publication having been enjoined upon the Secretary of State by the State Constitution, and the expense being an ordinary expense of the executive department.

Such appropriation is properly paid from revenue of the biennial period 1913-14, even though the publication itself occurred in the preceding biennial period, particularly since the printing bills did not become legal claims until the commissioner of public printing had measured the work in December, 1912.

Hon. M. A. Leddy,
Treasurer of the State of Colorado.

Dear Sir: I have your inquiry of January 22nd, directing my attention to Section 36 of the Short Appropriation Bill, in which you state:

> "This appropriation of $115,355.84 is intended to defray the expense of the bills initiated and referred, for the indebtedness that was contracted during the biennial period of 1911 and 1912. Warrants are now being drawn against this appropriation from the revenue of 1913.

"The statute provides that the expense of one biennial period shall not be paid from the revenue of another biennial period. Will you kindly advise whether warrants should be paid which are drawn against the revenue of 1913 for this purpose? Also kindly advise in what classification as to the order of payment, this appropriation stands."

I beg to advise that I have made a very critical examination of the Short Appropriation Bill, and of the law applicable thereto, and I have arrived at the conclusion that the appropriation of the sum of $115,355.84 was made for the payment of the publication of the constitutional amendments and the initiated and referred bills prior to the last general election; that this is an expense or indebtedness of the current biennial period; that the appropriation is valid and legal and belongs to the first class.

My reasons for these conclusions follow:

The Constitution of the State of Colorado, Art. XIX, provides for the method whereby the Constitution may be amended, and Section 2 of that Article, after providing that amendments may be proposed by a vote of two thirds of the members elected to each house, which vote shall be entered in their journal and published in the session laws of that year, provides further:

"And the secretary of state shall also cause the said amendment or amendments to be published in full in not more than one newspaper of general circulation in each county, for four successive weeks previous to the next general election for members of the general assembly."

The Seventeenth General Assembly of Colorado, at its extraordinary session, held in the year 1910, proposed an amendment to the constitution, providing for the initiative and referendum. This amendment, after specifying the form of petitions and the method of submitting the same, provides:

"The text of all measures to be submitted shall be published as constitutional amendments are published."

The constitutional amendment was submitted to the electors at the general election held in the year 1910, and was duly adopted and became and now is a part of the Constitution of the State of Colorado.

Under the Constitution, therefore, the Secretary of State is enjoined to publish the constitutional amendments and the initiated and referred bills. The people, in their sovereign capacity, have declared in favor of the Initiative and Referendum, and, under the fundamental law of this State, have imposed a duty of the most solemn character upon the Secretary of State. It therefore became his duty to publish the constitutional amend-

ments and the initiated and referred bills, and he certainly would have been guilty of gross lack of duty had he neglected it.

It is needless to say that when the Constitution imposes a duty upon any officer, the machinery for performing that duty must be found, and statutes which may be in conflict with the Constitution must submit to the Constitution, which is the expressed will of the people.

The Constitution of the State, Article V, Section 32, provides:

> "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the State, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject."

Section 21 of Article V provides:

> "No bill, except general appropriation bills, shall be passed containing more than one subject, which shall be clearly expressed in its title; but if any subject shall be embraced in any act which shall not be expressed in the title, such act shall be void only as to so much thereof as shall not be so expressed."

The title to the Short Appropriation Bill for this year is as follows:

> "A Bill for an Act to Provide for the Payment of a part of the Ordinary Expenses of the Executive, Legislative and Judicial Departments of the State of Colorado for the Months of December, 1912, and January, February and March, 1913."

Four questions now naturally present themselves in view of the constitutional provisions quoted, and the title of the act.

First: Can the payment of the expense of publishing these constitutional amendments and initiated and referred bills which was made prior to the last general election, be paid out of the revenues for the year 1913?

Second: Is this an ordinary expense within the meaning of Section 32 of Article V of the Constitution?

Third: Is the cost of this publication an expense for the biennial period of 1911 and 1912, or 1913 and 1914?

Fourth: Is it properly contained in the bill under the title which I have quoted?

Taking up these questions in their order:

I have shown you that under the constitution the duty devolved upon the Secretary of State to make this publication. It

was therefore different from the duties which devolved upon the various officers of the State by virtue of the statutes, and the Secretary of State, in the absence of necessary funds and an appropriation therefor existing at the time the publications were made, was in duty bound to incur whatever expense might be necessary for the purpose of the publication. It was not a matter that he could refuse to undertake upon the excuse that there was no money available at that time to pay the cost. The people of the State directed the Secretary of State to make the publication, and the cost thereof must be found out of some revenues of the State of Colorado, whether they be the revenues of the biennial period of 1911 and 1912 or the biennial period of 1913 and 1914, and inasmuch as this duty devolving upon the Secretary of State is one of the functions of his office, required by constitutional provision, there can be no question but that the appropriation made for this purpose, if otherwise correct, would be an appropriation of the first class. The statute making the classification for appropriations uses the language of the Constitution, and provides (Section 166, Revised Statutes of Colorado, 1908):

> "First: The ordinary expenses of the legislative, executive and judicial departments of the State government, and interest on any public debt, shall first be paid in full."

This naturally brings us to the second question, as to whether or not this is an ordinary expense. The Constitution, Section 16 of Article X, prescribes the limitation upon the expenditure which may be authorized by the General Assembly, and concludes:

> "This provision shall not apply to appropriations or expenditures to suppress insurrection, defend the State or assist in defending the United States in time of war."

The Supreme Court of the State of Colorado has construed this constitutional provision as defining ordinary and extraordinary expense. See In re Appropriations, 13 Colo. 316. At page 322, the Court says:

> "By section 16, article 10, of the constitution, appropriations and expenditures which may be made or authorized by the general assembly are of two general classes: *First,* ordinary, which include all kinds of appropriations and expenditures necessary and proper for the support of the government and its institutions in time of peace; *second,* extraordinary, or such as are necessary 'to suppress insurrection, defend the state or assist in defending the United States in time of war.'"

Under this distinction, there can be no question whatsoever but what the duty of publishing these amendments and bills on the part of the Secretary of State was an ordinary duty, and it

naturally follows that the expense thereof was an ordinary expense.

The third question is as to the period within which this expense is a charge.

It is true that the publication of these constitutional amendments and initiated and referred bills was made prior to the election in November of 1912. However the publication does not constitute the full performance of the act which makes the valid claim against the State.

Chapter LXXX, Revised Statutes of 1908, defines what shall be considered to be a legal notice. Under this definition, these publications were undoubtedly legal notices. The act also provides the fee which may be charged for the publication of legal notices. Contracts for the publication of amendments and bills were made by the Secretary of State with the various newspapers. Section 5237, R. S. 1908, which is included in the chapter on Public Printing, provides:

> "The commissioner of public printing shall carefully scrutinize and measure all work and material furnished under any and all contracts within the purview of all laws affecting printing and binding for the state."

Pursuant to this statute, the publication of these amendments and bills was referred to the Commissioner of Public Printing, and I have a certificate from that officer to the effect that on the 19th day of December, 1912, he measured the space covered by these amendments and bills as published, and certified the correct charges for the work done to the Secretary of State upon that date. His certificate to me states that his books and records bear out this statement. The Secretary of State also certifies that the bills for these publications were referred to the commissioner of printing, who measured and approved them upon the 19th day of December, 1912, and that vouchers No. 4454 to 4515, both inclusive, were issued to various persons by him the Secretary of State, on the 20th day of December, 1912, to the total sum of $115,355.84. In view of the law and these facts, there was no valid obligation upon the part of the State to pay for these publications before the 20th day of December, 1912, and it is therefore my opinion that this cost, to-wit, the sum of $115,355.84 is is an expense properly paid from the revenue of the biennial period of 1913 and 1914.

The act making the appropriation does not specify whether the appropriation is for the payment of bills already contracted or bills to be contracted, but if my conclusion is right on the foregoing, it makes no difference, and in addition to that, there could be no question whatever, when all circumstances are considered, but that the legislature intended to appropriate money for the payment of these bills incurred by the Secretary of State in the manner mentioned.

The fourth question is as to the title of the bill. If my conclusion of the third question is correct, then there is absolutely no doubt that the appropriation of this item is properly referred to in the title of the bill; but I go farther than that, and contend that, even should it be contended that this is not an expense of he biennial period of 1913 and 1914, nevertheless, the expense being incurred by the Secretary of State in the performance of constitutional duty, it must be paid. In that event, is the title of the bill correct? I have already quoted Section 21, Article V of the Constitution, that no bill except general apporpriation bills shall be passed containing more than one subject, which shall be clearly expressed in the title. This bill is a general appropriation bill, and therefore comes within the exception specified in this section.

I believe this fully answers the questions which you have propounded, and I merely desire to add that while this is the first occasion in this State for the payment of the cost of publishing initiated and referred bills, nevertheless we have been, for years past, paying the cost of the publication of constitutional amendments in exactly the same manner, under general appropriation bills, with titles, except as to dates, exactly the same as the one under which this appropriation is made.

I might refer you to the short appropriation bill of two years ago and others preceding that, and, so far as I know, this is the first occasion upon which any question has been raised. Precedent does not make law in all cases, but nevertheless this precedent surely has the force of a legislative interpretation of the constitution of this State and, in my judgment, goes far toward making this practice the established law of this state.

Respectfully submitted,

FRED FARRAR,
Attorney General.

(January 30, 1913.)

The item in Sec. 27 of the 1913 Short Appropriation Bill, "Emergency Fund to be used by Attorney General upon approval of the Governor in defense of the Water Rights of the State of Colorado, $50,000.00", is a valid first class appropriation, being one for ordinary expenses of the executive department, inasmuch as the statute (R. S. 1908, § 6168) expressly makes it the Attorney General's duty to "appear for the State, prosecute and defend all actions and proceedings, civil and criminal, in which the State shall be a party or interested, when required to do so by the Governor or General Assembly."

(Note: See also S. L. 1913, p. 381.)

Hon. M. A. Leddy,
Treasurer of the State of Colorado,
Denver, Colorado.

Dear Sir: I have your letter of January 23rd, directing my attention to Section 27 of the Short Appropriation Bill, approved

by the Governor upon the 18th day of January, 1913, and which makes an appropriation of $50,000.00 for the defense of the water rights of the State, the wording of the item being:

> "Emergency fund to be used by Attorney General upon the approval of the Governor, in defense of the water rights of the State of Colorado, $50,000.00."

Your inquiry is to the validity of this appropriation, in view of the provisions of Section 32 of Article V, of the Constitution, which reads:

> "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judicial departments of the State, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject."

You also inquire as to the classification of this appropriation.

I beg to advise that in my opinion, the appropriation is entirely valid and is entitled to position in the first class

In my opinion given to you upon the 27th day of January, 1913, in the matter of the appropriation of $115,355.84 for the payment of the expense of the publication of constitutional amendments, etc., the same question which you raise here was discussed among others there.

The principal question here is, "Is this appropriation for the ordinary expenses of the executive department?" and without hesitation, I say that it is.

The existing law, Section 6168 Revised Statutes 1908, makes it the duty of the Attorney General to

> "appear for the State, prosecute and defend all actions and proceedings, civil and criminal, in which the State shall be a party or interested, when required to do so by the Governor or General Assembly."

The defense of any matter, therefore, in which the State is a party or in which the State is interested, becomes a part of the ordinary duties of the Attorney General, subject, of course, to the provision "when required to do so by the Governor or General Assembly," and his defense of these matters is just as much one of the ordinary duties of his office as is the giving of opinions to the various departments of the State for whom he is counsel, or the many other matters which come within his jurisdiction.

The only thing upon which an argument can be based to the effect that this is not the ordinary expense, is the size of the appropriation, and the size is not the test. For a great many years, the Attorney General has been given an emergency fund, out of

which he has paid certain expenses entailed in the work of his office. He has also been given a contingent fund out of which other expenses have been paid. These appropriations have been comparatively small, and no question has ever been raised concerning them, and it seems to me that the only question which can be raised concerning this particular appropriation is that it is somewhat larger than are the usual appropriations for the Attorney General's office. However, the appropriation is made to enable the Attorney General to perform one of the functions of his office prescribed by law. No one can question the necessity for the defense of the State in this regard, and all patriotic citizens should approve aggressive action upon the part of the State along the lines which will preserve to the State not only the water which is necessary for the irrigation of our land, but all the property of the State which is directly or indirectly dependent thereon.

Without its water, Colorado will revert to a condition worse than if the development of the last fifty years had never occurred, and every city or town in the State of Colorado is more or less dependent upon the agricultural development of the State. If the agricultural development is prevented, or worse than that, if the development which we have already made is destroyed because of the loss of the water, the whole state will immediately lose in proportion, and to say that the condition would be ruinous would be to put it mildly.

The Supreme Court of this State, in 13 Colo., page 322, makes a definition of ordinary and extraordinary expenses

> "By section 16, article 10, of the constitution, appropriations and expenditures which may be made or authorized by the general assembly are of two general classes: *First,* ordinary, which include all kinds of appropriations and expenditures necessary and proper for the support of the government and its institutions in time of peace; *second,* extraordinary, or such as are necessary 'to suppress insurrection, defend the State or assist in defending the United States in time of war.'"

This definition was given in an opinion handed down in answer to certain interrogatories propounded to the Supreme Court by the Governor of the State, and I am not able to find, after a most careful examination of the authorities, not only of this State but elsewhere, any decision which overrules this definition.

I also desire to direct your attention to Section 166 of the Revised Statutes of the State of Colorado, 1908, which provides for the classification of appropriations. This section reads in part:

"First—The ordinary expenses of the legislative, executive and judicial departments of the State Government, and interest on any public debt, shall first be paid in full."

You will note that this statute, in so far as I have quoted it, is a quotation of a portion of Section 32 of Article V. of the Constitution, which I have heretofore cited. It therefore follows that appropriations for the ordinary expenses of the executive, legislative and judicial departments and interest on the public debt are placed in the first class. The reverse of this statement is obvious, and that is that the expenses which are not the ordinary expenses of the legislative, executive and judicial departments of the state government and interest on the public debt are not in the first class. Can it be contended for a minute that it was not the intention of the legislature to make an appropriation which would become immediately available for the imperative necessity of defending the State against attacks which are being made upon it by persons who would deprive the State of its water? To me the conclusion is irresistible that the appropriation is, in every way, valid and belongs to the first class.

I remain,

Yours very truly,

FRED FARRAR,
Attorney General.

(February 7, 1913.)

Appointment of deputy county clerk and payment of county clerk as clerk of board of county commissioners.

Mr. Ira B. Coy,
Clerk & Recorder Crowley County,
Ordway, Colorado.

Dear Sir: In reply to your letter of the 6th, in which you ask a number of questions, beg leave to submit the following:

Your first question is "Is the County Clerk of this County compelled by law to employ a deputy?" In regard to this, I wish to refer you to Section 1258 of the Revised Statutes of Colorado, 1908, which says:

"Every such Clerk shall appoint a deputy in writing under his hand, and shall file such appointment in his office, and such deputy, in case of the absence or disability of said clerk, or in case of a vacancy in his office, shall perform all the duties of such clerk during such absence or until such vacancy shall be filled. Every such Clerk may appoint other deputies and his sureties shall be responsible under his official bond for the acts of all such deputies."

In regard to the payment of such deputy clerk, I wish to refer you to Section 2580 Revised Statutes of Colorado, 1908. This statute says in substance, that deputies and assistants employed by the sheriff, county clerks, etc., shall be paid salaries out of the fees, commissions and emoluments of the office wherein employed, the compensation and time of service to be fixed by the Board, the selection of said deputies and employes to be made by the officer authorized to employ them.

Your second question "How is said County Clerk to be paid for his services as clerk of the Board of County Commissioners?" In the case of Henderson vs. Pueblo County, 4 Colo. App. 301, it is held that the clerk holds the one office and he discharges the duties of clerk of the Board of County Commissioners ex-officio, and the fees and emoluments arising from his office as clerk of the Board are the fees and emoluments of his one office, to-wit County Clerk. The last paragraph of Section 2538, Revised Statutes of Colorado, says:

> "For services as clerk of the Board of County Commissioners, including the making of the proper record of the proceedings of said board, writing up warrants, making the reports required by law and such other work as may be required by the Board of County Commissioners or by law, in matters pertaining to the business of the County in counties of all classes, $5.00 per day for each day actually employed, eight hours constituting one day's work."

It will be seen from this that as clerk of the Board of Commissioners, you are to receive $5.00 a day and from the case that I cited above, this is to be taken out of the fees of your office. Of course, you understand by Section 2573, R. S. 08, that county clerks in those counties of Division A of all counties of the fourth class shall receive as their annual compensation the sum of $2,100, to be paid quarterly out of the fees and emoluments of their respective offices, actually collected and not otherwise.

Considering this in the light of the decision in Henderson vs. Pueblo County, whatever amount you receive for your services as clerk of the Board has to be taken and considered as part of your annual salary, which in the present case, must not exceed $2,100 annually.

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

P. S. If there is not enough money to pay a deputy clerk, such clerk will be out his salary. In a number of counties, clerks act for almost nothing at all, but of course this is up to you and your deputy.

(February 28, 1913.)

Duty of sheriffs in relation to forest and prairie fires, on public and private lands.

W. R. Pyke, Chairman,
Board of County Commissioners,
Hooper, Colorado.

Dear Sir: Mr. I. W. Bennett, Deputy State Forester, has asked that I write you concerning the duty of sheriffs in relation to forest and prairie fires. Let me refer you to Sections 1280 and 1281 of the Revised Statutes of Colorado, 1908, which provide:

> "Section 1280. The sheriff of every county shall, in addition to other duties, act as fire warden of their respective counties in case of prairie or forest fires."
>
> "Section 1281. It shall be the duty of the sheriff, undersheriffs and deputies, in case of any forest or prairie fire, to assume charge thereof; for controlling and extinguishing the same, they may call to their aid such person or persons of their county as they may deem necessary. The county commissioners may allow the sheriff $5.00 per day for such services, and the deputies not to exceed $3.00 per day, and such other expenses necessarily incurred as they may deem just."

This statute makes it the duty of the sheriff to take charge when necessary, and to extinguish forest and prairie fires, whether on public or private lands. I do not mean to say that the sheriff is entitled to incur any indebtedness where the same is not necessary, but if it is necessary, and he should be given reasonable latitude to use his discretion, he must take charge and must extinguish such fires.

I understand that you are in doubt as to his authority where the fire occurs on private lands. Mr. Bennett has doubtless explained to you the arrangement which has been made with the Forest Service of the United States Government, and if any of the lands of your county are in a forest reserve, this agreement will cover it. The arrangement is that the Government shall make certain remuneration to the sheriff for his services in such case, but for the exact terms of the agreement, I must refer you to Mr. Bennett, whose address is Fort Collins, Colorado.

I might add that the State is very anxious to secure the effective cooperation of the counties in this work, and assure you that Mr. Bennett is merely endeavoring to bring about an arrangement which will be effective and satisfactory.

Yours very truly,

FRED FARRAR,
Attorney General.

(March 20, 1913.)

What is required of the publisher of supreme court decisions under Revised Statutes 1908, Sec. 1437.

The W. H. Courtright Pub. Co.,
Denver, Colorado.

Gentlemen: I have yours of March 7th with reference to an interpretation of Section 1437 of the Revised Statutes of Colorado, and have carefully considered what you have to say with reference to the matter and have also carefully considered the statute in question. The statute is indefinite as to detail and therefore it becomes necessary to invoke the rules of statutory construction in arriving at a conclusion in the matter.

The legislature no doubt was of the opinion that it was important that the decisions of the Supreme Court be published and distributed as speedily as convenient and for that reason this statute was passed, and it is therefore necessary to give the statute a reasonable construction and, if possible, in construing it, carry out the purpose for which the same was passed. If you would give it a construction that by the use of the term "manuscript" they meant not only the opinions but also the index and tables of cases cited, then the purpose of the statute would be absolutely defeated for the reason that until the copy of the opinions are printed by the publisher and sent to the reporter, the tables of cases and index cannot be made out by the reporter, therefore the publisher, if such were the rule, could delay the work of the reporter as long as he wished and delay the publication of the book indefinitely. I therefore think that the construction a court would put upon this statute would be as follows:

That the publisher shall print and publish the reports within sixty days after the time that sufficient opinions are furnished to the publisher to complete a volume. It is the reporter's duty under the law to furnish indexes and tables of cases to the publisher. He is a public officer and the presumption is that he will do his duty and will furnish these indexes and tables of cases within sufficient time to give the publisher time to print and publish the volumes within sixty days. I will make this qualification, however, and that is that in the event that the reporter should be derelict in his duties and should take an unreasonable length of time to prepare and furnish the indexes and tables of cases and such dereliction and delay on the part of the reporter would prevent the publisher from furnishing the volumes within the sixty days, then the publisher would, no doubt, be excused from complying strictly with the statute and that the sixty days limit

provided in the statute should, in such case, be extended for a period equal to the time of the delay of the reporter.

Yours very truly,

FRED FARRAR,
Attorney General.
By NORTON MONTGOMERY,
Assistant.

(March 28, 1913.)

When registration of electors in school districts is necessary.

Miss Florence Salabar,
County Superintendent of Schools,
Durango, Colorado.

My dear Miss Salabar: In answer to your letter of the 27th, asking an interpretation of the 1911 registration act, beg leave to say the following:

It is provided by an act approved May 28, 1911 and found on page 201 of the School Law Annotated and on page 589 of the Session Laws of 1911, that:

> "Every elector qualified to vote at a general election, having been a resident of the school district for thirty days next preceding the date of election shall be entitled to vote at school elections, provided that he has been first duly registered as hereinafter provided in this act, for districts having a school population of more than 3000."

The first part of this section, up to the word 'provided' means just what it says, that is, that any elector qualified to vote at a general election, etc. The second part, starting with the word 'provided,' applies to districts having a school population of more than three thousand and states that they must be registered. Reading the entire law through and construing all sections together, there is only one logical conclusion that can be drawn and that is that the registration of electors applies only to districts having more than three thousand school population, for instance, there is a provision that in districts of more than three thousand, any person possessing the qualifications of an elector, if he is not on the registration list, can appear before the County Clerk not less than thirty days nor more than sixty days prior to the time of holding the election and make oath, etc., and have his name placed upon the registration list. If it is contended that this act applies to all districts, irrespective of whether or not they have more than three thousand population, why did the legislature limit the section above provided for to those districts having a school population of more than three thousand? A case can arise where say

fifty families move into the State and district and lack one month of having a year's residence at the election held in the fall, so that they could not vote at that time. They have now resided in the district approximately fifteen months, and when the school election comes on in May, if the contention is true that this act applies to all school districts, these people cannot vote, as this provision which allows qualified electors who have not their names on the list to have them placed there by appearing before the County Clerk, etc., only applies to those districts having a school population of more than three thousand.

Again there is a section in regard to the manner of voting which states that in school districts having a population of more than three thousand, when any elector appears for voting, he shall give his name and place of residence to one of the judges. If his name shall be found on the registration list, and if the judges are satisfied that he is a qualified elector, his name and address shall be entered by the judge of election. You will notice that this section also says "in school districts of more than three thousand." Giving the act as liberal a construction as possible, we are brought down to the fact that in the first provision that I quoted you up to the word "provided" that the meaning is clear that no registration is necessary, and from the word "provided" we find that registration is necessary in school districts having a school population of more than three thousand as hereinafter provided. Then all the rest of the section provides the way and means, etc., for registering in districts of more than three thousand, also the manner of voting, etc.

Inasmuch as Durango has a school population of only seventeen hundred, no registration would be necessary and every elector qualified to vote at a general election having been a resident of the school district for thirty days next preceding the date of election shall be entitled to vote at the coming school election.

Hoping this will clear the matter for you, I am,

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

(April 7, 1913.)

How allotments out of the State Road Fund may be made to particular counties under the State Highway Commission Act (S. L. 1913, p. 286).

Hon. T. J. Ehrhart,
State Highway Commissioner,
Capitol Building, Denver, Colo.

Dear Sir: I am in receipt of your letter of April 4th enclosing a letter to you dated April 3rd from Mr. Leonard E.

Curtis, one of the members of the Advisory Board created by the State Highway Commission Act, commonly known as House Bill No. 254, approved March 17, 1913.

The question propounded is whether the State Highway Commission can make to the same County an allotment from the 75% portion of the money at the disposal of the commission, and also an allotment from the 25% portion, under the provisions of Section 8 of that act.

From a reading of this section, it seems clear that the 75% portion of the available funds is intended to be apportioned by the State Highway Commissioner and the Advisory Board (whom together, for brevity's sake, I shall refer to as the "Commission") among those counties which respectively appropriate for State roads an amount equal to that allotted by the commission, or such fraction (not less than one fifth of the amount allotted) as the commission in their discretion may find satisfactory in view of the character and condition of the particular County. It seems equally clear from a reading of the whole act that the remaining 25% portion of the available funds is to be used by the commission in whatever counties may seem to require aid, apparently regardless of any question whether the particular county has appropriated an amount equal to that allotted by the commission, or a lesser amount of one fifth or more, and irrespective of whether any amount whatever is contributed by the county. It seems to me that the General Assembly must have intended by this provision to enable the commission to use the 25% in working out an effective and harmonious system of state roads without being hampered by the uncertainties necessarily incident to the varying policies of local boards of county commissioners in relation to internal improvements.

If the above stated view is correct, it follows that one particular county may, on account of special difficulties, be allowed to obtain from the 75% allotment even five times as large an amount as it contributes for its state roads, and may at the same time receive a substantial part of the 25% allotment. This construction seems most nearly in line with the spirit and certainly within the letter of the act.

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(April 9, 1913.)

A corporation organized to carry on a trust, deposit and security business under R. S. 1908, §§ 293-302, may become surety on bonds in certain cases, and without complying with the Surety Company law (R. S., §§ 923-940).

A corporation organized as a trust company under R. S., §§ 303-314, may also become surety in some cases.

As to whether any corporation not a surety company can become sole surety where two or more sureties are required by law, *quaere.*

Honorable E. W. Pfeiffer,
State Bank Commissioner,
Denver, Colorado.

Dear Sir: You have referred to this office the copy of a letter received by you from Mr. William G. Maitland, dated February 17, and a copy of your answer thereto, referring to various questions submitted to you in relation to trust companies.

First, as to whether a trust company organized in this State can become surety on bonds, I would say that while Sections 933, 934, 935 and 936 of the Revised Statutes of 1908, cited by Mr. Maitland, contain language which would justify a doubt, this doubt seems to be set at rest by Section 940, which is a saving clause, in the following language:

> "That nothing in this act contained shall be construed or held to require trust, surety or guaranty companies organized under the laws of the State of Colorado authorized by their charter and the laws of the State to act as bondsmen, or furnish surety on bonds, to make any deposit with the State Insurance Commissioner, or to appoint the said State Insurance Commissioner, or any other person, or officer, its agent or attorney."

The powers of a corporation are either such as its articles of incorporation state in the form of corporate purposes, or such others as are necessarily implied in the latter.

A corporation organized under the old statute, providing for incorporation to carry on "a trust, deposit and security business" (R. S. 1908 §§ 293 to 302 inclusive), may thus be authorized "to become security for administrators, guardians or other trustees or persons, in cases where by law or otherwise one or more sureties are required, for a rate of compensation, and upon such terms and conditions as may be established by the directors of any such association." (§299)

On the other hand, a trust company organized under the Act of 1891 (R. S. 1908, §§ 303 to 314, inclusive) may similarly have the power "to make insurance for the fidelity of persons holding places of responsibility and trust." (See Subdivision "tenth" in Section 305.)

The further question of whether a trust company can become sole surety where "two or more sureties" are required, is not

raised by Mr. Maitland's letter. It is interesting in this connection to note the wording found in the Surety Company Act of 1897, expressly enabling a surety company to become sole surety on bonds (§§ 923, 926, 932). There is no corresponding language in the statutes relating to trust companies or trust, deposit and security companies. You will readily see that this power does not necessarily follow from the language in R. S. 1908, Section 299, above quoted. It may therefore be doubted whether the legislature has made a trust company, or a trust, deposit and security company, sufficient as sole surety where by law two or more sureties are required.

In response to the final query of Mr. Maitland's letter, I may say that the office of the Insurance Commissioner informs me that no license or certificate of authority is issued by that office to trust companies to act as surety companies.

Regretting that the press of business in this office has delayed this letter until now, and trusting that the above answers your purposes sufficiently, I am,

Very truly yours,
FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy Attorney General.

(May 13, 1913.)
County poll tax illegal.

Mr. A. I. Kendel,
Treasurer Conejos County,
Conejos, Colorado.

Dear Sir: In answer to your letter of recent date, in which you ask for an opinion as to the authority for levying an annual poll tax of $1.00 on every able bodied male inhabitant of the county between the ages of twenty-one and fifty in addition to the state military poll and the road poll, beg leave to submit the following:

Referring to the statutes, I find the following provision on page 51 of the laws of 1870:

> "A poll tax shall be assessed on every male inhabitant of the territory over the age of twenty-one years and under fifty years, whether a citizen of the United States or an alien."

This same provision is found on page 741, section 2241 of the general laws of 1877, except the word "state" is substituted for "territory". It is also found on page 878, Section 2569, of the

general statutes of 1883. It is also provided by section 2245, page 742, general laws of 1877 and by section 2572 page 879, general statutes of 1883, that

> "There shall be levied and assessed upon taxable real and personal property within this state in each year, the following taxes: for state revenue, three mills on the dollar, except as provided in Section 44 of this act, when no other rate is directed by the State Board of Equalization; for interest and payments on county bonds, such rate as may be necessary to pay said interest and payments; for ordinary county revenue, including the support of the poor, not more than ten mills on the dollar; for the support of schools, not less than two nor more than five mills on the dollar; for road purposes, not more than five mills on the dollar; *and a poll tax not to exceed $1.00 for such purposes as shall be determined by the county commissioners of each county.*"

It was under these two provisions that the authority was given the county commissioners for levying a county poll tax of $1.00. The acts of 1901 and 1902 repealed these provisions, so that at present there is no authority for levying this county poll tax, the only poll taxes on our statutes being the military poll and the road poll.

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

(May 14, 1913.)

Classification of appropriations.

The first class includes: Bureau of Labor Statistics, Department of Factory Inspection, State Board of Charities and Corrections, Department of Game and Fish, State Entomologist, State Bureau of Child and Animal Protection, Civil Service Commission. These are properly included in the 1913 general appropriation bill.

State Geological Survey and Traveling Library Commission are probably in third class.

State Historical and Natural History Society is in fourth class.

Only first-class appropriations can legally be included in general appropriation bills.

Hon. Roady Kenehan,
Auditor of the State of Colorado,
Denver, Colorado.

Dear Sir: In your letter of May 6th, referring to the general appropriation bill, commonly called the long appropriation bill, enacted by the Nineteenth General Assembly, you inquire the classification of the following departments:

Bureau of Labor Statistics,
Factory Inspection,
Board of Charities and Corrections,
Game and Fish,
State Historical and Natural History Society,
State Entomologist,
State Bureau of Child and Animal Protection,
Civil Service Commission,
State Geological Survey and
Traveling Libraries.

I beg to advise that the Constitution of the State of Colorado, Article V, Section 32, provides:

> "The general appropriation bill shall embrace nothing but appropriations for the ordinary expenses of the executive, legislative and judical departments of the State, interest on the public debt, and for public schools. All other appropriations shall be made by separate bills, each embracing but one subject."

Section 166 of the Revised Statutes of 1908, as amended by the Nineteenth General Assembly, classifies the appropriations and directs their payment in the order of their classification. The first class constitutes appropriations for "the ordinary expenses of the legislative, executive and judicial departments of the state government, and interest on the public debt." It will be noticed that this includes practically all the appropriations which may be included in the general appropriation bill pursuant to the constitutional provision above mentioned, the only exception being that this section of the statute does not include appropriations for public schools, which may be included, under the constitution, in this bill.

The second paragraph of Section 166 places appropriations for the penal institutions and the charitable institutions in the second class.

The third class includes appropriations for educational institutions.

The fourth class appropriations are those for "any other officer or officers, bureaus and boards, to be paid pro rata, if there be not sufficient funds to pay in full."

The fifth class includes all other appropriations not included in the four preceding classes.

There has been no comprehensive decision on the question of classifications since the adoption of this act. As a matter of fact, this law was enacted in order to meet the decisions of our Supreme Court concerning the preference to be given to appro-

priations. Difficulty arises in making the classification of certain departments, particularly as between the first and fourth classes. The fact that the appropriation is made for a board or a bureau does not, of necessity, place the appropriation in the fourth class. I would say that the test is rather the duties which devolve upon the board or the bureau, and if these duties pertain to the execution of law or the administration of the affairs of state, in the absence of some other controlling provision, they naturally fall into the first class rather than into the fourth class.

Having this distinction in mind, I would classify the following as being in and properly belonging to the first class:

Bureau of Labor Statistics,
Department of Factory Inspection,
State Board of Charities and Corrections,
Department of Game and Fish,
State Entomologist,
State Bureau of Child and Animal Protection, and
Civil Service Commission.

It is my opinion that appropriations made for the above mentioned departments are entitled to payment under the general appropriation bill above mentioned.

That leaves, of those included in the list, the State Historical and Natural History Society, the State Geological Survey and the Traveling Libraries. It is my opinion that the State Geological Survey and the Traveling Libraries can not be given a classification higher than the third. I will admit that as to the State Geological Survey there is some question, and as to the payment to that department, I would suggest that, unless ordered to do so by a court of competent jurisdiction, you are justified in refusing payment except as of the third class.

The State Historical and Natural History Society seems to have no duty to perform in the execution of law pertaining to the administration of the affairs of the State, and I am constrained to rule that any appropriation made for it would be of the fourth class.

However, by this opinion, in placing these three departments in the third or fourth class respectively, I do not mean to say that the appropriations made for these, contained in the general appropriation bill, are valid as of that class. The Constitution, as I have quoted, says that the general appropriation bill shall contain only appropriations for the ordinary expenses of the executive, legislative and judicial departments, etc. Taking this provision of the Constitution literally, and it is supported by dicta from one or two opinions of our Supreme Court, and the rule has been adhered to by my predecessors in office, it is my opinion that the provisions of the long appropriation bill for the

State Historical and Natural History Society, the State Geological Survey and the Traveling Libraries, are a nullity, and that these departments must rely, if they are to receive any money from the State whatsoever, upon the statutes creating them, or upon special appropriations.

Unfortunately, the statute creating the State Historical and Natural History Society does not attempt to make any appropriation or to fix the salaries whatsoever.

The statute creating the State Geological Survey does, undoubtedly, make a continuing appropriation. See chapter CXXXIII, page 1433, Revised Statutes of 1908, and the amendments thereto, Chapter 20, page 73, Session Laws of 1911. In the event that any further question arises concerning this appropriation, I will be glad to answer your inquiry at the proper time.

A continuing appropriation is provided for in behalf of the Traveling Libraries, of the sum of $2,000 per year, Session Laws of 1911, page 160.

The second inquiry in your letter is as to whether or not it is legal for you to draw a warrant for any expense incurred by any of the above named departments, unless an appropriation is made therefor in the long or general appropriation bill. The answer to this depends largely upon the statutes with relation to these departments, and I will be obliged to you for a specific question. It is difficult to answer the question which you ask for the reason that it is exceedingly comprehensive and would require a review of all the statutes with relation to any or all of these departments.

Your third question is: "When the act creating one of the foregoing boards, bureaus or commissions specifically states the salaries of the officers and employes, can the amount be changed by appropriations made by the long appropriation bill?" The answer to this also depends upon the statutes involved, and I must ask for a specific question or questions in order to be able to answer this. There are certain tests which have been prescribed by the decisions of our Supreme Court for determining a continuing appropriation. In some instances the statute, while it specifies the salary of an officer, does not amount to an appropriation. In other cases, it does, and I would be pleased to give you an opinion upon any specific question upon which you may require advice.

Respectfully submitted,

FRED FARRAR,
Attorney General.

(May 15, 1913.)

Where the State Board of Land Commissioners collects a fee for a specific expense outside of the regular routine work of the office, such as the cost of advertising, the fee paid must be first used for such purpose and only an unused surplus can be applied otherwise.

Hon. Elias M. Ammons,
Governor State of Colorado,
Denver, Colorado.

Dear Sir: I have your letter of recent date containing the following question upon which you ask my opinion.

"Has the Land Board the right to pay any expenses out of their cash fund until the purposes for which the cash fund was collected are first discharged?"

In answer to this inquiry I beg to advise that the cash fund of the State Board of Land Commissioners arises from the collection of certain fees which are provided for by the laws of this state.

Section 5172, Revised Statutes of 1908, provides:

"The state board of land commissioners is hereby authorized and empowered to collect the fees herein fixed for the issuance of leases, patents, certificates of purchase, right of way deeds, recording assignments, making township plats, filing bonds, and for the filing of all documents necessary to be filed in said office, to-wit: * * * (Here are set out the specific fees.)

Each application for lease must be accompanied by the advertising fee of five dollars, and the filing fee of fifty cents. * * *

If the board orders a sale to be made, the applicant shall be required to pay an advertising fee of seventeen dollars. * * *

All moneys collected by the state register and deputy in pursuance of any action or resolution of the board, shall be paid into the state treasury.

All aforesaid fees shall be paid in advance to the deputy register and be transmitted and accounted for by said deputy to the register of the board, as in the case of other funds, and the said register shall turn the same into the state treasury, as in the case of moneys collected for rent and partial payments on certificates of purchase. And it shall be the duty of the state treasurer to receive said funds and credit the same to the land commissioners' cash fund, to be paid out by him on warrants drawn by the auditor of state. It shall be the duty of said auditor to draw warrants against said fund in payment of such vouchers as may be audited, and allowed by the state board of land commissioners and

certified to by the governor of the state and the register of the state board of land commissioners."

It will be noticed that a portion of these fees are charged for filing instruments, approving bonds, issuing leases and other similar things which pertain to the work of the office of the board of land commissioners. In addition to these you will notice that an advertising fee of $5.00 is collected with each application to lease state lands and applications to purchase must be accompanied by an appraisement fee of $10.00, and if the board orders a sale of the property to be made, the applicant should be required to pay an advertising fee of $17.00. It is not necessary to refer specifically to each item in this section of the statute. It is apparent that at least a portion of the money which goes into this cash fund is collected for specific purposes, or rather to defray specific expenses, and I say without hesitation that this money so collected, constitutes a trust fund and must be used primarily for the purposes for which it is collected. That is to say, when a fee is charged for the purpose of advertising a notice of an application to lease, or for advertising a sale of state lands, or where a fee is charged for the expenses of appraising a piece of state land, then the money so collected must be used for the payment of this expense, and in every other case where by this statute a fee is charged to cover certain specific expenses, that expense must be paid. I do not intend to go so far as to say that these fees must be applied for the ordinary clerical work of the office, which would be done in the ordinary course of events, but, rather, that when some specific expense outside of the regular routine work of the office is incurred, and a fee is collected for that purpose, the fee must be used for that purpose and only the surplus remaining above the cost of the expenses of such specific thing, can be used for any other purpose.

As an illustration. I am advised that the burdens placed upon this cash fund have been so heavy that various newspapers throughout the state have not been paid for the publication of notices such as applications to lease and notices of sales of state lands, until a deficit of approximately two thousand dollars has been accumulated against this fund. The money collected for the purpose of advertising these notices should be used to pay these newspapers and I therefore rule, in answer to your inquiry, that the cash fund must be used primarily for the purpose for which it was collected, and that only the surplus can be used by the board for other purposes.

Yours very truly,

FRED FARRAR,
Attorney General.

(May 17, 1913.)

The continuing appropriations in S. L. 1911, pages 610 and 267, for salaries of bailiffs of the Supreme Court and the Court of Appeals, cannot be reduced by the general appropriation bill.

Hon. James R. Killian,
Clerk, Supreme Court,
Denver, Colorado.

Dear Sir: I am informed that a question exists concerning the salaries of the bailiffs of the Supreme Court and the bailiff of the Court of Appeals. It has been suggested that the general appropriation bill for the fiscal years 1913 and 1914 might control the statute establishing the salaries. It seems that the long appropriation bill purports to fix the salary of each bailiff at $1,200.00.

Upon examining the statute which appears as Chapter 214 of the Session Laws of 1911, at page 610 thereof, I have no difficulty in concluding that the salary of $1,500.00 provided for each bailiff of the Supreme Court is a continuing appropriation inasmuch as the amount of the salary and the time and method of its payment are all therein specifically mentioned.

A reference to Chapter 107 of the Session Laws of 1911 discloses, in Section 2 thereof, a provision for the appointment of the bailiff of the Court of Appeals, and also that

> "The compensation to be paid to said court officers and stenographers shall be the same as that paid for like services performed in connection with the Supreme Court."

This, in my opinion, is entirely clear and adequate as a continuing appropriation.

I have no doubt that the Auditor of State will issue a warrant on the $1,500 basis in favor of each of the bailiffs.

Very truly yours,
FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(May 19, 1913.)

The act changing salaries of county judges, S. L. 1913, p. 225, does not change the salaries of present incumbents, since Sec. 30, Art. V., of the Constitution prohibits any increase or diminution of salary or emoluments after election or appointment.

Hon. Ethelbert Adams,
Telluride, Colorado.

Dear Sir: Replying to your inquiry with respect to the effect of the act concerning judges and clerks of county courts, being

House Bill No. 337, approved the 8th inst. and which, unless referred, will go into effect July 8, 1913, I desire to make the following statement.

This act, in so far as it relates to matters concerning which you inquire, fixes the salary of the county judges of the different counties of the state and provides that instead of being paid from the fees of their offices and of the offices of the clerks of said courts, they shall be paid from the general fund of the county.

In counties of the first and second classes and of Division B of the fourth class, no change is made in the salary, but in counties of the third class the salary is reduced from three thousand dollars to twenty-seven hundred dollars, and in counties of Division A, fourth class, the salary is reduced from twenty-one hundred dollars to eighteen hundred dollars. My opinion is that in so far as concerns counties of the third class and counties of the fourth class, Division A, the act is inoperative during the terms of the present incumbents of the office of county judge. If it were otherwise, the act would plainly be in violation of Section 30 of Article 5 of the Constitution, providing that

> "No law shall extend the term of any public officer or increase or diminish his salary or emoluments after his election or appointment."

I am not unmindful of the suggestion in a memorandum brief which you have written, that this constitutional provision applies only to state officers and further that the present compensation of county judges is not in the nature of a salary. Both of these questions, however, have been passed upon by the Supreme Court of this State in the case of Henderson vs. County of Boulder, 51 Colo., 364, in which case it was held that the change of classification of a county from the third class to the second class could not affect the compensation of the then county judge, even to the extent of allowing him clerk hire. Judge Henderson was held in that case to be a public officer within the meaning of the constitutional provision quoted, and his compensation, although payable only from the fees of his office, was held to be a salary. The decision in that case would therefore seem absolutely conclusive in so far as county judges of counties of the third class and of Division A of the fourth class, under the new act, is concerned.

The question presents itself, although it is not suggested by you, whether the only portion of the act which would be inoperative as to these officials, is not that portion fixing the amount of the salary. If this view should prevail, the county judges in these counties would be considerably benefited by receiving from the general fund of the county salaries in the amounts fixed by the existing law. I do not believe, however, that the act can be so separated as to be regarded as containing independent provisions, one fixing the manner in which the salary should be paid and the other fixing the amount of the salary. On the contrary,

it seems plain that in consideration of the benefit to the judges of being paid monthly from the general county fund, by which they would be sure to receive their entire salary, the amount of the salary was reduced so that, if the act is inoperative in one respect, I think it must be held to be so in the other also, with the result that county judges in counties of the third class and in Division A of the fourth class will continue to be entitled to salaries of three thousand dollars and twenty-one hundred dollars respectively, payable, however, only from the fees of their offices and from the fees of the office of the clerks of said court.

Yours truly,

FRANK C. WEST,
Assistant Attorney General.

(May 22, 1913.)

A Regent of the University is entitled under R. S. 1908, Sec. 6939, to a per diem and also to mileage for traveling to and from meetings of the board, but not to reimbursement for room rent or meals.

Hon. Roady Kenehan,
State Auditor,
Denver, Colo.

Dear Sir: Your letter of May 13, 1913, enclosing certain vouchers of the members of the Board of Regents of the University received and in answer to your inquiries, will say that under the law, Section 6939 Revised Statutes 1908, vouchers in question should be submitted to the State Auditor and he is authorized to allow the same for the attendance and mileage. The only claims, however, that the State Auditor has anything to do with are for attendance, which is $4.00 a day, and mileage for traveling to and from the meetings of the Board. The mileage referred to is the same as the mileage allowed to members of the General Assembly, which is the actual expenses under the present law. However, at the time J. C. Bell was elected, the mileage was fifteen cents per mile, and Bell would be entitled to collect this amount.

You also ask whether or not it is necessary that the receipts be attached to the vouchers. I will say that this is not necessary. However, you have a right to know whether or not the money was expended in the manner set forth in the voucher, and would probably have a right to require, if you desire, that the receipts be attached to the vouchers.

I find no statute authorizing the expense of J. B. Ragan provided in J. B. Ragan's voucher. If he was employed in business for the University, he would be entitled to $4.00 per day for the time he was employed, but there is no provision that I can find for room rent or for meals. He would probably have

the right, if engaged in transacting business for the University, of charging $4.00 a day for such services. I would therefore return this voucher to him and call his attention to the fact that you know of no provision of the law allowing the items as charged in the voucher.

Yours very truly,

FRED FARRAR,
Attorney General.
By NORTON MONTGOMERY,
Assistant.

(May 27, 1913.)

What amounts to pollution of water taken from ditches for domestic use, and who can complain.

Mr. W. F. Lovely,
Grand Valley, Colo.

Dear Sir: Answering your esteemed and valued communication of the 8th inst. which has remained unanswered only because of the strenuous demands upon our time by the stress of state affairs, I beg leave to advise you as follows:

1. That there are no express statutory provisions in Colorado with regard to the erection of buildings and the location of corrals on irrigating ditches when the waters from the same are used for domestic purposes.

2. That whether or not the erection of such buildings and the location of corrals on irrigating ditches when the water from the same are used for domestic purposes amounts to a pollution or nuisance, is a question of fact to be determined in each case, and if by reason thereof a pollution of the water should result and there should be an actual material impairment of the use of the water for domestic purposes, it would be unlawful.

3. Under the law of appropriation, pollution *by a subsequent appropriator* is wrongful if it, to any material degree, impairs the use of the prior appropriator, and there can be no question involved whether the impairment is unreasonable or excessive. There must, however, be an actual material impairment, and of this the complainant has the burden of proof.

4. Under the law of appropriation, upon principle, pollution by a *prior appropriator* against a subsequent appropriator would always seem damnum absque injuria, if it existed at the time the subsequent appropriation was made; but the weight of authority is that, on the ground of public nuisance, priority will not sanction pollution where it impairs domestic use of a subsequent appropriator, or impairs the health or agriculture of a community subsequently formed upon the bank of a stream

though the pollution began while the stream was upon public land before the community was formed.

5. In the above connection, I call your attention to Sec. 6, Art. 16, Constitution of Colorado, providing for diverting unappropriated waters and that those using water for domestic purposes shall have preference over those claiming for any other purpose; Sections 2820 to 2832, R. S. 1908, providing against the pollution of public waters containing fish and providing the procedure for abating such nuisance, and Sections 5030 to 5041, R. S. 1908, with regard to nuisances affecting the public health.

Very truly yours,

FRED FARRAR,
Attorney General.
By LESLIE E. HUBBARD,
Assistant.

(June 5, 1913.)

Definition of the term "foot" as applied to water measurement in Colorado.

Hon. John J. Tobin,
Montrose, Colorado.

Dear Sir: I have your letter of May 31st, in which you ask for my opinion concerning the proper method of ascertaining a cubic foot per second in the flow of water.

In your letter, you say, "I contend that a foot of water running through an orifice six inches high and six and four tenths inches wide, with a five inch pressure above the orifice, or eleven inches from the bottom of the orifice, is a foot of water." You state that there is a difference of opinion and desire my construction of this term.

I beg to advise that your question pertains more to engineering than it does to law. However, I am glad to give you my opinion, which coincides with that of the State Engineer, and to say that under the practice as it prevails in this State, your specifications as outlined above are correct.

The laws of Colorado define a statutory inch as follows:

> "Water sold by the inch by any individual or corporation shall be measured as follows, to-wit: Every inch shall be considered equal to an inch square orifice under a five inch pressure, and a five inch pressure shall be from the top of the orifice of the box put into the banks of the ditch, to the surface of the water; said boxes or any slot or aperture through which such water may be measured shall, in all cases, be six inches perpendicular inside measurement

except boxes delivering less than twelve inches, which may be square, with or without slides; all slides for the same shall move horizontally and not otherwise, and said box put into the banks of ditch shall have a descending grade from the water in ditch of not less than one eighth of an inch to the foot." Section 7026, R. S. of Colorado.

Later on, it became the practice to measure water by the cubic foot, and the cubic foot per second, which is generally termed a 'second foot.' The term cubic foot is applied to the measurement of standing water, and the second foot to the flow. The statutes of this State provide for the measurement of water in this manner, but do not define the term 'cubic foot' nor the term 'cubic foot per second' or 'second foot'.

The term 'cubic foot' is, of course, readily understood, but the term 'cubic foot per second' or 'second foot' requires engineering determination. It is merely the flow of water which will produce one cubic foot of water each second of time.

Mr. Edwin S. Nettleton was State Engineer from 1883 to 1887. I am informed that he conducted a series of experiments for the purpose of ascertaining the number of statutory inches in a cubic foot per second. You will readily understand that these experiments consisted of running a certain amount of water through a measuring device such as is specified for the statutory inch until a given number of cubic feet of water was received, and then resolving the problem from statutory inches to second feet. As a result of his experiments, he announced that 38.4 statutory inches constitute one second foot. Let me suggest here that you must not confuse the miner's inch with the statutory inch.

I notice from the authorities on irrigation law that this amount, that is, 38.4, is not recognized by all irrigation engineers as being the correct number of statutory inches in a second foot, the variations, however, are not large. Some authorities apparently accept 39 inches and another which I noticed, 40 inches. However, for the use of the engineering department of this State, 38.4 has been accepted and that, so far as I am advised, is recognized throughout the State of Colorado by irrigation engineers.

Having the number of statutory inches in the second foot, it is, of course, easy to ascertain the size of the box and the pressure which will give a cubic foot per second of time, or, in other words, which will give 38.4 statutory inches, and the size of the box which you have designated, that is to say, six inches high, six and four tenths inches wide, with a five inch pressure above the orifice, will give you a cubic foot per second of time.

It may be of some interest to know that the Agricultural College has just completed, or is about to complete a hydraulic laboratory for the purpose of determining more accurate methods

of gauging and measuring quantities and the flow of water. I assume that it will be some time before they announce the result of these experiments. Should you desire to know more of this, I would suggest that you write to Prof. E. B. House, who is the head of the Irrigation Engineering Department at the Agricultural College at Fort Collins.

I trust that the information contained herein may be of some assistance to you.

Yours very truly,

FRED FARRAR,
Attorney General.

(June 7, 1913.)

Eight-Hour Law for Women.

To bring an occupation within the terms of this act (S. L. 1913, page 692) in so far as manufacturing, mechanical or mercantile work is concerned, that occupation must be in an establishment which is primarily either manufacturing, mechanical or mercantile, regardless of the particular work assigned to the woman employes.

A woman employed to do some minor manufacturing, mechanical or mercantile work in an establishment which is not primarily a manufacturing, mechanical or mercantile establishment is not included within the operation of this part of the act.

Under Sec. 25 a, Art. V., Colorado Constitution, the act is constitutional, though it was an initiated measure and not an act of the General Assembly.

Definition of terms.

Hotels, restaurants and laundries.

Specific cases discussed.

Hon. James B. Pearce,
Secretary of State,
Ex-Officio Labor Commissioner,
Denver, Colorado.

Dear Sir: In answer to your inquiry of recent date concerning the Eight Hour Law for Women, adopted by the people of this State at the last general election, I beg to advise you as follows:

My answer will indicate the questions which you have asked, but inasmuch as other inquiries have been propounded from other sources, I have included them also in this opinion.

This law provides:

> "Section 1. Employment of females in any and all manufacturing, mechanical and mercantile establishments, laundries, hotels and restaurants, is hereby declared to be injurious to health and dangerous to life and limb."

Section 2 provides:

> "No female shall be employed in any manufacturing, mechanical or mercantile establishment, laundry, hotel or restaurant in this State more than eight hours during any twenty-four hours of any one calendar day. The hours of work may so arranged as to permit the employment of females at any time, provided, that any such female shall not work more than eight hours during the twenty-four hours of any one calendar day."

Section 3 makes the violation of the act a misdemeanor and provides for the punishment.

The wording of this act is peculiar. In the first paragraph, you will notice it says that the "Employment of females in any and all manufacturing, mechanical *and* mercantile establishments, * * * is hereby declared to be injurious" etc. In construing this act, the word "and" should be construed to be "or" and the employment of females in any and all manufacturing establishments, mechanical establishments or mercantile establishments is declared to be injurious, etc.

In the second place, I must direct your attention to the use of the word establishment. This word is significant in this statute, and its presence in the act determines many of the questions which will arise in the construction of this law.

In order that an occupation shall be declared to be within the operation of the law, in so far as manufacturing, mechanical or mercantile work is concerned, that occupation must be in an establishment which is either primarily manufacturing, mechanical or mercantile. Not all manufacturing work nor all mechanical work nor all mercantile work wherein females are employed comes within the operation of the law, and the converse of this is true, that the employment of females in excess of eight hours along lines which do not pertain directly to manufacturing nor to the operation of machinery is proscribed or prohibited, if such female works in either a manufacturing, mercantile or mechanical establishment. Let me illustrate my meaning: a stenographer employed in a real estate office does not come within the meaning of this law because a real estate office is neither a manufacturing, mechanical nor mercantile establishment, but a stenographer working in the office of a factory does come within the meaning of the law, because a factory is a manufacturing establishment, in other words, the term establishment as modified by these adjectives, in so far as this part of the act prevails, governs the operation of the law.

It might be argued than an establishment could be divided for the purpose of the operation of this act, and work which did not pertain directly to the manufacture of some commodity or the operation of a purely mechanical contrivance or to the dealing

in merchandise did not come within the provisions of the law, but I can see no reason nor legal excuse for so ruling, and it is my opinion that an establishment, in so far as its lines of work are concerned, can not be divided; that if it comes within the definition of any one of the three adjectives which qualify the word establishment, then the employment of females, no matter what work such females do, is proscribed.

It therefore necessarily follows that women may be employed to do some minor manufacturing, mechanical or mercantile work in some establishment which is not, as a whole, either a manufacturing, mechanical or mercantile establishment, and yet be not included in the operation of this law. In short, the definition of the various terms, manufacturing establishment, mechanical establishment or mercantile establishment, governs. It is the place where the female works, rather than the kind of work, that governs the operation of this law. This is also true in construing the other proscribed occupations, that is, laundries, hotels and restaurants.

It may be argued that such a construction is unconstitutional, inasmuch as it places the law within the prohibition of the constitution against special legislation or what is popularly termed "class legislation." This would be true if it were not for the fact that the Constitution of the State of Colorado, Article V, Section 25a permits the General Assembly to provide a law limiting the hours of employment in certain lines of work therein mentioned

> "and any other branch of industry or labor that the General Assembly may consider injurious or dangerous to health, life or limb."

It is true that this act was not a legislative enactment, but was an initiated bill and was adopted by the people of this State. The amendment of the Constitution of the State of Colorado, Article V, Section 1, adopted by the people of the State at the general election of 1910, provides for the initiative and referendum, and reserves to the people the right to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the General Assembly, and also the power, at their option, to approve or reject, at the polls, any act, item, section or part of any act of the General Assembly. I do not mean, at this time, to rule that the initiated and referred bills adopted by the people of the State, have the force of a constitutional amendment. That is a question which is not involved in this opinion and must be answered when the occasion demands it, but I do believe that the people themselves, under the constitutional amendment providing for the initiative and referendum, have equal authority with the General Assembly, so that the provision of the Constitution, Article V, Section 25a, which permits the General Assembly to declare any branch of industry or labor injurious or dangerous to health, life or limb, also gives the peo-

ple of the State the right to determine any branch of industry or labor likewise dangerous. Any other construction would be to deny to the people a right which they undoubtedly have reserved to themselves under the constitutional amendment providing for the initiative and referendum, and certainly in view of the Constitution itself, as a whole, it cannot be argued that the General Assembly of this State is, in this respect, endowed with powers which the people themselves are deprived of.

In construing these terms, manufacturing, mechanical and mercantile, it is difficult to make a definition sufficiently accurate to cover all questions which may arise, and the most that I can do in the absence of a specific question, is to give a general definition.

The term "manufacturing establishment" is, of course, plainly understood. It is, in short, an institution where the chief business is the manufacture of some commodity, in other words, a factory.

A mechanical establishment is harder to define, but according to the decisions, it is an establishment designed for certain kinds of mechanical processes; an institution where the desired result is accomplished by the aid of machines more than animate action. The line of distinction between a manufacturing and mechanical establishment is not clearly drawn, in fact, an institution may partake of the character of both.

A mercantile establishment is an establishment dealing in merchandise or commodities, the word "mercantile" referring to the business of merchants.

In the event that any doubt arises in your mind from time to time concerning any specific institution, I will be glad to assist you in determining the classification.

The other institutions coming within the purview of the act are hotels, restaurants and laundries. You will notice that the word "establishment" is not used in connection with these institutions, so that each one of these stands by itself.

LAUNDRY.

There is no great difficulty in defining the terms, and a laundry is no less a laundry, within the definition of this act, because it happens to be a part of some other institution or establishment. Therefore, the employment of females in laundries which may be connected with hospitals or sanitariums or any other institution not specifically mentioned in the proscribed list in this act is, however, such an employment as is contemplated by the act and must not exceed eight hours a day. A laundry, however, to come within the proscribed list, must be one which caters to the public or to a certain class of the public, such as a laundry doing washing for the patients of a hospital. A laundry for merely private use is not within the meaning of the act.

HOTEL.

A hotel is defined as a house for entertaining strangers or travelers; a place, the business of which is to furnish food, lodging or both to travelers or to persons of transient nature, and the character of the business and not the name or description of the institution governs. An institution which caters to the public in supplying lodging or food and lodging, whether it is called a rooming-house, boarding-house, lodging-house or by any other name, is, nevertheless, a hotel. I wish to distinguish, however, between a hotel and a boarding-house which does not cater to the public but entertains permanent guests. Under the decisions construing the term "hotel, boarding-house" etc., this distinction is clearly made. The hotel caters to a transient trade. The mere fact that some of its guests are permanent, however, does not change its character, but, on the other hand, an institution which caters solely to a permanent class of patrons is not a hotel. It is largely a question of fact, and as specific instances arise, I will be glad to give you specific opinions as needed.

RESTAURANT.

The term "restaurant" is, of course, clearly understood and needs no definition.

Taking up some of the specific questions which have been propounded to me, I beg to advise as follows:

POST-OFFICE.

A post-office does not come within the proscribed list of occupations. However, in many instances, post-offices in small places are connected with mercantile establishments, and if the employee of the post-office is also an employee of the mercantile establishment, then the act would govern, but a woman working in the post-office alone is not within the intent of this law.

PROFESSIONAL EMPLOYMENT.

The mere fact that the work done requires professional training, makes no difference. The law does not, as I have stated, refer so much to the kind of work as to the place of work. Therefore, a woman who is, for illustration, a pharmacist working in a drug store, comes within the purview of the act and must not be employed to exceed eight hours in any one calendar day.

EMPLOYEE HOLDING STOCK.

A woman working in any one of the proscribed occupations who is the owner of stock of the corporation owning or conducting such an institution is, nevertheless, an employee within the meaning of this act.

EMPLOYEE RECEIVING COMMISSION.

A woman receiving a commission upon the sales which she makes or sharing in some similar profit plan is, nevertheless, an employee and the terms of the act govern.

SANITARIUMS AND HOSPITALS.

Sanitariums and hospitals do not come within the list of occupations designated by the act. I do, however, direct your attention to the fact that laundries in these institutions are, in my judgment, within the proscribed list and to that extent, the employment of women in these institutions must be limited to eight hours.

STATE INSTITUTIONS.

State institutions are not within the proscribed list, subject, however, to my construction concerning laundries. However, as Attorney General of the State, I wish most strongly to recommend that each State Institution set the example, in so far as it possibly can, in following this law, which, in my judgment, is designed for the accomplishment of a great amount of good.

ADVERTISING AGENCY.

An advertising agency, as I understand the term, is neither a manufacturing, mechanical nor mercantile establishment and therefore is not within the intent of the law.

COMPOSITORS AND LINOTYPE OPERATORS.

I am unable to classify newspapers and printing offices as being either manufacturing, mechanical or mercantile establishments. It is true that they have, possibly, certain manufacturing which is incidental to the general business, but under my ruling given above, that an establishment can not be divided for the purposes of this act, it is my opinion that the employment of women in this line of work is not limited to eight hours. It occurs to me, however, that in certain cases, an establishment which does nothing more than manufacture what is generally known as plate matter might possibly be construed to be a manufacturing establishment. If any such case comes to your attention, I will be glad to give it specific construction.

UNDERTAKING ESTABLISHMENTS.

An undertaking establishment is not within the list of occupations contemplated by the act.

PHOTOGRAPH GALLERIES.

A photograph gallery, in the ordinary sense of the term, does not define an institution coming within the meaning of the act.

I have been unable to find any decision which would determine definitely the status of such institutions. They have been defined for other purposes, but not for the purpose of a law such as this, and in determining their classification, I have in mind only the intent of the law and the nature of the institutions. It is obvious that they are not manufacturing, and they are not mercantile, but in view of the fact that these plants are simply machines and combinations of machines for transmitting communications, it seems to me that they can properly be classed as mechanical. I desire to say, however, that a judicial determination of this question may not bear out this conclusion. It also seems to me that there may be a slight difference between the telephone and the telegraph. In the telephone, the operator does merely the mechanical work of connecting two or more wires over which the subscriber talks. In the telegraph, the operator does more than this; she must be possessed with a certain technical skill and actually, by the use of that art, transmits the message. However, an analysis of the whole scheme of the telegraph seems to me to lead to the conclusion that it is, as a whole, a mechanical institution. I must admit that this is not altogether free from doubt, but I am so strongly impressed with the correctness of my view that I am ready to support it by any proper action in court for the purpose of a final judicial determination of the question.

In so far, however, as this act applies to telegraph and telephone companies, it must be construed in view of the Constitution of the United States, Article 1, Section 8, which gives congress power to regulate commerce among the several states; in other words, the state can not legislate upon any subject pertaining to interstate commerce in such manner as to interfere with the jurisdiction of the Federal Government in this regard.

Under numerous decisions, the law seems to be well established that the police power of the state extends to any reasonable regulation of persons or corporations engaged in interstate commerce when such regulation is designed to preserve the health or safety of the people, unless congress has seen fit to legislate upon that particular subject, in which event the act of congress supersedes the law of the state.

Congress has seen fit to legislate concerning telegraph and telephone operators in so far as they pertain to the work of railroads, 34 Stat. at Large, Section 1416, among other things, provides:

> "That no operator, train dispatcher, or other employee who by the use of the telegraph or telephone dispatches, reports, transmits, receives, or delivers orders pertaining to or affecting train movements shall be required or permitted to be or remain on duty for a longer period than nine hours in

any twenty-four-hour period in all towers, offices, places, and stations continuously operated night and day, nor for a longer period than thirteen hours in all towers, offices, places, and stations operated only during the daytime, except in case of emergency, when the employees named in this proviso may be permitted to be and remain on duty for four additional hours in a twenty-four-hour period on not exceeding three days in any week."

I am unable to learn of any other federal statute regulating the hours of employment of telephone and telegraph operators. Therefore, it is my opinion that, except as provided for in this statute of congress as quoted, the law of this state governs, and the employment of women by telegraph and telephone companies must be limited to eight hours a day.

EMPLOYEE WORKING FOR DIFFERENT EMPLOYERS.

Another question propounded to me is whether or not a female may be employed in one institution within the proscribed class not to exceed eight hours and then may work for a second employer, also within the proscribed class, in the same day, making her total hours of work exceed eight. I beg to advise that this can not be done legally. To permit it would be to permit the doing of something indirectly which could not be done directly. If this could be allowed, employers in similar lines of business could merely exchange their forces at some time during the day, and thus practically get an excess of eight hours of work from each employee. This law affects not only the employer, but also the employee, and it prohibits the employee from working in the proscribed occupations more than eight hours, just as it prohibits the employer from requiring such work. The employee can not waive the operation of this law, and her consent to work in excess of eight hours does not make her employment legal.

In conclusion, I desire to state that this act is the direct expression of the sovereign will of the people of the State of Colorado. Like most legislation, it involves some difficulty in the matter of construction because of the great variety of institutions which may or may not be affected by it, and the difficulty of application when not all kinds of employment are placed within the proscribed list. The purpose of this law, however, is not alone for the benefit of the individual affected by it, but it is designed for the good of the people as a whole. If women engage in injurious occupations for such a length of time as to endanger their health or their lives, the people as a whole are affected and the future welfare of the race is jeopardized.

Therefore, laws such as this, restricting the employment or the hours of labor, come within the broad scope of the police power of the state, and should receive from all good citizens a

construction within the meaning and intent and to meet the purpose for which the law is framed.

You will readily understand that in this opinion I have been able to give you only a general construction of the law, and specific cases may arise wherein exceptions may occur to the operations of this law as I have construed it. When such cases come to your attention—and, in fact, in the enforcement of this law generally—I will co-operate with you whenever I can be of assistance.

Yours very truly,

FRED FARRAR,
Attorney General.

(June 10, 1913.)

To what extent the property of societies like Masons, Odd Fellows, and Knights of Pythias is exempt from taxation.

Under what circumstances church property is exempt.

Hon. G. W. Clark,
Montrose, Colorado.

Dear Sir: Your letter of May 13, 1913, received and in answer thereto will say that your question of whether or not Masons, Odd Fellows and Knights of Pythias lodges are exempt from taxation, has never been directly passed upon in this state, and in arriving at a conclusion in this matter we only have the provisions of the state constitution and the statutes to guide us, together with decisions of other states which have similar constitutional provisions to our own.

Section 5 of Article 10 of the State Constitution provides:

"Lots with buildings thereon, if said buildings are used solely and exclusively for religious worship, for schools, or for strictly charitable purposes, also cemeteries not used or held for private or corporate profit, shall be exempt from taxation, unless otherwise provided by general law."

Section 6 of Article 10 of the State Constitution provides:

"All laws exempting from taxation, property other than that hereinbefore mentioned, shall be void."

Section 5545 of the Revised Statutes of 1908 provides:

"Sec. 18. The following classes of property shall be exempt from taxation, to-wit: * * * Second. Buildings used exclusively for religious worship, for schools, or for strictly charitable purposes, with the grounds whereon the same are situated."

Section 5547 of the Revised Statutes of 1908 provides:

> "Sec. 20. Any building or house owned by church organization, when used solely and exclusively as a residence or dwelling by a minister, preacher or priest actually serving as such, and the necessary lot or parcel of ground therefor on which the said building is situated, if the assessed valuation of the same shall not exceed three thousand dollars shall be exempt from taxation; if the assessed valuation is greater than three thousand dollars, then three thousand dollars of such valuation shall be exempt from taxation."

In determining whether the lodges mentioned are exempt from paying taxes, it is first necessary to determine the purpose for which the lodges are organized,—that is, whether or not they are organized exclusively for charitable purposes, and second, as to whether or not the property they seek to have exempted is used exclusively for said charitable purposes. If the lodges are organized exclusively for charitable purposes and the property that they use is also used exclusively for charitable purposes, then the property would come within the exemption. Otherwise, it would not. The fact that the lower floor of a lodge building was used for the purpose of renting out to receive revenue therefrom would necessarily prevent the lodge from claiming the property or any part thereof, exempt, and this would also be true of a vacant lot held by a lodge, even though the lodge was organized exclusively for charitable purposes, it would not be exempt from taxation.

In the case of a church which is erecting a building to be used for religious worship, I think they would be entitled to the exemption not only on the uncompleted building, but also upon the lot on which it was situated, provided that the assessor was satisfied that the purpose to which they expected to devote the building was exclusively for religious worship.

In regard to a church owning more than one parsonage there would seem to be no question but that the parsonage not occupied by the minister is taxable, and not exempt under Sec. 5547 above quoted, and, furthermore, it has been held in other states having similar constitutional provisions to our own that a statute passed exempting parsonages is unconstitutional. The Supreme Court of this state, however, has not passed upon this statute exempting parsonages and therefore we do not desire to express an opinion as to what their decision might be.

Yours very truly,

FRED FARRAR,
Attorney General.
By NORTON MONTGOMERY,
Assistant.

(June 10, 1913.)

The scope and nature of the powers and duties of State Highway Commissioner and his advisory board under the State Highway Commission Act (S. L. 1913, p. 286).

Honorable T. J. Ehrhart,
State Highway Commissioner,
Denver, Colorado.

Dear Sir: I am in receipt of your letter of June 4, transmitting a letter received from Mr. Leonard E. Curtis, one of the members of your advisory board. This letter of Mr. Curtis has been read with great interest, as it raises an important question with respect to the general intent of the new Highway Commission Act (House Bill No. 254, Laws of 1913), approved March 17, 1913.

The act referred to seems to have for its purpose the establishment of a comprehensive, effective and uniform system of state roads within the confines of our State. By the act, not only is it made the duty of the State Highway Commissioner and his assistants "to give such advice, assistance and supervision with regard to road construction, improvement and maintenance throughout the State as time and conditions will permit and as the rules and regulations of the commissioner and the advisory board may prescribe"; but every step in the construction and maintenance of any part of a state road is by the act required to be first subjected to the preliminary scrutiny and approval and the continuous supervision of the State Highway Commissioner and his Advisory Board (whom together I will designate for convenience 'the commission').

Not a single survey can be made by a board of county commissioners; not a single grade can be established; no plans, or specifications, or preliminary estimates of cost for any work on state roads can be prepared, except in accordance with the rules and regulations to be made by the Commission; nor unless a report thereof is made to the Highway Commissioner,—the Commission having the power to make any changes therein that they see fit and order such further surveys, plans and specifications or estimates as they deem necessary,—and only when finally approved by the Commission can the proposed work of construction or improvement proceed. While the actual work is under the direction of the local board of county commissioners, or its representative, it is always expressly subject to the aforesaid rules and regulations and to the supervision and approval of the Commission.

No contract for work on state roads can be let by the county unless the Commission has approved. Not one dollar can be paid out on such contract work until the estimates are approved by the Commission; nor can any part of the state allotment be paid over to any county in excess of the State's proportion of the cost

and expenses of the work actually completed, or before acceptance by the Commission of the work so actually completed. The tenor of the act is such as apparently to contemplate the work on state roads as a joint enterprise of the State and the county, in which each has an equal interest, so far as the doing of the work is concerned. Nowhere is there a hint of any possibility that the county can do its own share of the work on state roads separately, without the strict supervision and approval of the Commission, or without making that part of the work an integral part of one definite, joint program, indivisible in regard to execution so far as the state and county contributions of work are concerned, separable only in regard to the sums respectively contributed by the state and the county to pay for the work when actually completed. Any other view would seem irreconcilable with the expressions used throughout the act.

To sum up, I beg to advise you that in my opinion you are correct in the view you take, namely, that "when the Highway Commission apportions State funds to a county on the condition that a certain proportionate amount is set aside by the County Commissioners, then the total sum in its expenditure should be treated alike."

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(June 25, 1913.)

A board of county commissioners has no power to assign the tax sale certificates of purchase held by the county to a person for a lump price irrespective of the individual certificates, nor to transfer such certificates under an arrangement for the payment of a certain percentage out of the proceeds of their sale by the assignee.

Hon. H. A. Avery,
County Attorney,
Lake City, Colorado.

Dear Sir: I have your letter of the 18th inst., asking for the opinion of this office as to the power of the board of county commissioners of Hinsdale County with reference to a proposed assignment of all tax sale certificates of purchase now held by the county.

I am of the opinion that the board has no power to make such an arrangement as the one proposed, for two reasons:

First: Section 5726, Revised Statutes of 1908, while authorizing the board to fix the sum for which any such certificate may be transferred, does not, in my judgment, authorize the lumping together of all tax sale certificates held by the county and the

transfer thereof for an entire price. I believe that, on the contrary, the section requires that a price be fixed upon each certificate so transferred.

Second: The arrangement proposed to be made is not, in my judgment, a sale of the tax sale certificates such as is contemplated by the statute, but merely an arrangement for the collection of the amount thereof on a commission of fifty per cent.

If I am correct in my views as to the real character of the transaction, I believe it is beyond the power of the county commissioners, for the reasons given by the Supreme Court in discussing a similar arrangement as to the assessment of property in Chase vs. Boulder County, 37 Colo., 268.

Yours very truly,

FRED FARRAR,
Attorney General.
By FRANK C. WEST,
Assistant.

(July 2, 1913.)

When government land becomes taxable for payment of school bonds.

Mr. N. G. Jones,
Two Buttes, Colorado.

Dear Sir: Supplementing my letter to you of recent date in regard to the case of Calloway vs. D. & R. G. Ry., 6 Colo. App. 284, in its connection with the taxing of Government land for the payment of school bonds, I wish to say the following:

I do not think this case should receive a broad interpretation. It was decided on account of a statutory provision of ours which says that any taxable real estate in a district at the time bonds are issued will still be subject to its proportionate share of said bonds if the land is set apart or joined to some other district, the Court holding that this statute must be strictly construed, and in the railway case, the land that was set apart was not, at that time, taxable real estate, being Government land, and so it was not subject to pay these bonds. In my opinion, if this land had remained in the old district and had become patented land, it would then have been subject to pay its share of said bonds and interest remaining unpaid at the time patent was issued.

The erection of a school house increases the value of the land surrounding it. When people homestead, they want to get as near to a school house as is possible. Especially is this so in case the homesteader has a family. If there are five or six families in a school district who have title to their land and twelve or fifteen homesteaders who have not, and the district is bonded for the erection of a school house by the patented land-holders, it seems to me that when the homesteaders get title they should

be subject to pay their share of the unpaid bonds. Their land has been increased in value on account of the erection of this school house, and the children have received the benefit of an education. There may be patented desert claims in a school district at the time bonds were issued to build the school house; such claims would be subject to pay their share of the bond issue. A short time afterwards an irrigation ditch is run near these claims, so that they get water. Their valuation thereby increases and they would have to pay more of an assessment on these bonds than formerly. In other words, they have to pay for the increased valuation. In my mind this case is similar to the one at bar and as long as they have to pay for their increased valuation, the homesteader also should have to pay for his increased valuation. I am of the opinion, therefore, that lands to which title has not been obtained from the Government at the time school bonds are issued by a district of which such lands form a part, and these lands are set off or detached from a district before title is perfected, they are not subject to a bond taxed in the original district when title is completed. This is the principle laid down in Calloway vs. D. & R. G. Ry.

That State or Government land occupied under contract of purchase or homestead claims, title having been acquired and lands deeded after bonds have been issued, and said land remaining in the same district, is subject to assessment the same as other lands for the payment of bonds issued by the school district of which they from a part, or such portion of said bonds, if any, that remains unpaid, provided that the title has been acquired and land deeded before said bonds had matured.

Yours very truly,

FRED FARRAR,
Attorney General.

By CLEMENT F. CROWLEY,
Assistant.

(July 5, 1913.)

State Engineer is entitled to fee for examining and filing each map and statement, whether original or amended, describing a claim or claims to water right.

Hon. John E. Field,
State Engineer,
Denver, Colorado.

Dear Sir: In reply to your inquiry of July 2, 1913, in regard to the question as to whether your office should make a charge for an amended filing, the Law of 1911 provides that the State Engineer shall collect a fee of $10.00, if the amount of water claimed does not exceed twenty cubic feet per second, and an additional fee of $1.00 for each cubic foot per second claimed in excess of twenty, "for the examination and filing of *each map*

and statement describing a claim or claims to a water right." An amended filing certainly is a *statement* describing a claim or claims to a water right. The legislature has provided that the State Engineer *shall* collect a fee for *each* map and statement describing a claim or claims to a water right. The fact that in the amended filing, less water is claimed and that it is the same water described in the original filing, does not change the fact that the amended filing is a separate statement describing a claim to a water right.

The law having provided that a fee must be collected for each statement, it follows that a fee should be charged for amended filings. The previous holding of the State Engineer's office to the effect that the fee was for the filing of the map and statement and not for the claim to the water right, is correct, but the State Engineer should not overlook the word "each" contained in the statute, which precedes the words "map and statement." The words "each map and statement" are found in the act of 1903, which were not changed by the amendatory act of 1911.

Yours very truly,

FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant.

(July 7, 1913.)

Under R. S. 1908, § 6403, the State Board of Stock Inspection Commissioners may by order legally condemn diseased stock and cause it to be killed.

How expenses incurred in quarantine are to be paid.

Dr. W. W. Yard,
State Veterinary Surgeon,
Denver, Colorado.

Dear Sir: Your letter of July 5th received, in which you refer to previous letters written by you on June 5th and 17th.

Since receiving those letters I have had several conversations with you, and thought we thoroughly understood the matter. Had I known you desired a written opinion, would gladly have furnished you the same.

The statute with reference to stock inspection and your duties and the duties of the board, is very plain; and assuming that the same is constitutional, which we have no reason to doubt, the board and its officers have the power in cases of emergency to quarantine stock, and in the event of contagious diseases, to order the same killed.

Section 6403, Revised Statutes, provides that the board may condemn diseased stock and cause the same to be killed. This is

the only section which provides for the killing of stock. Therefore, in order to protect yourself from liability when you kill stock, you should have such order. In the case referred to in your letter, this order has been given by the board and the minutes showing such order have been preserved.

You will therefore have the right under the statute to proceed to kill the stock.

There is no provision of the statute for the payment of expenses incurred by the owner while stock is in quarantine. Section 6402, Revised Statutes, is probably broad enough to authorize the veterinary surgeon to go to the necessary expense of quarantine, where the owner is not able to meet the expense, provided the Stock Board has any fund out of which the same may be paid. However, there is no liability for expenses in the case you mentioned, and the fact that a certain sum was paid for a care-taker where no provision is made therefor, is no justification or authority for paying other expenses.

Yours very truly,

NORTON MONTGOMERY,
Assistant Attorney General.

(July 8, 1913.)

The sufficiency of maps filed under R. S. 1908, § 3181, in connection with the construction or change of a reservoir, ditch, canal or feeder, is to be determined by the State Engineer.

Hon. John E. Field.
State Engineer,
Denver, Colorado.

Dear Sir: In reply to your inquiry of July 2nd, wherein you state that there was presented to you a preliminary filing map which did not show that any survey with instruments had been made, no tie to a section corner or other monument, and no course and distance given along the line of the canal; and wherein you submit the following inquiry, "I wish your opinion whether I can accept this preliminary survey which I would call a sketch map, or whether I should insist on an instrumental survey being made": it is a matter of discretion with the State Engineer.

The Act of 1903, being Section 3181, R. S. 1908, provides for a filing in the office of the State Engineer, for each specific claim, "in such form as shall seem sufficient and satisfactory to the State Engineer." The materials used for the maps are such "as may be required by regulation of the State Engineer." The rest of the section specifies what the maps should contain, as showing the point of location of the head-gate, etc.

Section 3182 provides for the contents of the statement filed with the map.

Section 3183 provides, in the latter part of the section:

> "Whenever, through the necessity for extended surveys requiring long periods of time, it shall be impracticable for the claimant or claimants to file a complete map and statement within sixty days, as required above, a map and statement as complete as may be practicable shall be filed, with a further statement that a complete map and statement will be filed later, and upon the completion of such survey a full and detailed map and statement, amending the ones first filed, shall be offered for examination and acceptance in the same manner as herein provided for the original filing."

Who shall determine whether it is impracticable for the claimant to file a complete map and statement? The natural presumption is the State Engineer. A careful consideration of the three foregoing sections shows clearly an intention on the part of the legislature to leave these matters to the discretion of the State Engineer.

Mills, in his irrigation manual, in construing Section 3181, says:

> "They must be filed, however, in duplicate within sixty days after the commencement of the work, in the office of the State Engineer, who shall, *if an examination shows that the data therein contained is sufficient and satisfactory for a clear presentation of the facts,* file one of the maps and statements in his office," etc.;

thereby leaving it to the State Engineer to determine whether the contents are sufficient and satisfactory to him for a clear presentation of the facts.

Quoting further from Mills' Irrigation Manual:

> "The act does not designate any time from which the priority shall be dated, nor does it give any power to the State Engineer other than seeing that the map and statement shall contain a sufficient statement of the work proposed. It also fails to provide any penalty for a failure to make the required filings."

The fact that the legislature failed to provide a penalty would indicate that it was not the intention of the legislature to deprive a claimant of any substantial rights by failing to comply strictly with the statute.

Mills construes the purpose of the act to be simply a means of obtaining a good and sufficient record of the various diversion projects throughout the State, which give notice of the facts

therein contained, to subsequent appropriators. In determining whether you should accept the preliminary statement referred to in your inquiry, the test is whether or not the filings are sufficient and satisfactory to you for a clear presentation of the facts.

Yours very truly,

FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant.

(July 8, 1913.)

The Civil Service Commission, in its disbursements, is limited to the provisions of the 1912 amendment (S. L. 1913, p. 682), no authority being given to pay any of its expenses out of the cash fund established by § 12 of the original Civil Service Act (S. L. 1907, p. 265).

Honorable Roady Kenehan,
Auditor of State,
Denver, Colorado.

Dear Sir: In answer to your communication, written some time ago, with reference to the so-called Cash Fund of the Civil Service Commission, will say that there appears to be no law authorizing the paying out of this Cash Fund for expenses incurred by the Civil Service Board; and that the board is limited in its disbursement of funds to the provision contained in the amendment to the original act adopted at the general election of 1912.

This new section makes a continuing appropriation of $2400 per annum for the salary of the secretary, and $3,400 per annum for the salaries of additional employes, and for traveling, incidental and contingent expenses of the members and employes of said commission.

The Civil Service Act, as it originally existed was adopted in 1907. Section 12 thereof provides:

> "Every applicant for examination, except unskilled laborers, shall pay the State treasurer the sum of one dollar, to be placed to the credit of the commission in a special fund for the purpose of defraying so far as possible the expenses to be incurred hereunder, * * *"

The only provisions of the act, as it originally existed, for the incurring of expenses of any kind are contained in Section 3 of the original act, which provides that the commission shall appoint a secretary, to be paid a salary and his necessary traveling expenses, and that they may employ such other clerical assistance as may be necessary to carry out the provisions of the act.

This section, in so far as the secretary's salary is concerned, was construed by the Supreme Court in the Cornell case, not to amount to an appropriation by the legislature of the secretary's salary; and following the ruling in that case, we think the same rule applies as to the other expenses provided in the section. This section has been re-enacted in the amendment above referred to,—the amended section providing for all of the expenses provided for in the original act, and also providing for a continuing appropriation for the purpose of paying these expenses.

There are no other expenses that the board would be entitled under the law to incur than those referred to in the present amended section, and the people in adopting this amended section specifically provided the method of payment of those expenses.

It will, also be noted that Section 12 provides no means of getting this cash fund out of the treasury. It does not, as in the case of other cash funds, provide who is to draw the vouchers; neither does it provide that the Auditor is to draw the warrant upon the Treasurer for the purpose of withdrawing the money from this cash fund; and, in fact, there is nothing whatever in the law to indicate an intention on the part of the legislature to appropriate this fund so as to make it subject to withdrawal by the board.

Respectfully,
FRED FARRAR,
Attorney General.
By NORTON MONTGOMERY,
Assistant Attorney General.

(July 22, 1913.)

As to assessment, by the county assessor, of live stock shipped into a county for the purpose of feeding.

Under what circumstances the property of fraternal organizations, such as the Printers' Home and the Modern Woodmen's Sanitarium at Colorado Springs, is exempt from taxation.

Method of assessing water rights.

The Colorado Tax Commission,
State House, Denver.

Gentlemen: Replying to your favor of recent date, submitting three questions, I desire to make the following statement as to the law governing the matters concerning which you inquire:

Should live stock shipped into a county for the purpose of feeding be assessed by the county assessor? Construe Session Laws 1911, Chapter 191.

This question cannot be answered with a simple yes or no, as the answer must depend somewhat upon the circumstances shown to exist in each case. An analysis of Chapter 191, Session Laws 1911, exclusive of the first portion thereof concerning stock driven or ranging into a county for the purpose of grazing, concerning which I assume there is no question, leads to the following conclusions:

(a) If the stock in question be brought into the State after September 1st and removed therefrom before December 31st of the same year, it is not liable to taxation within this state.

(b) If, having been brought in after the first of September it remains in the State after December 31st of the same year, it is liable to taxation for the following year, and the assessor of the county where it may be found may, if necessary, assess it before April 1st, and the treasurer of the proper county may enforce payment of the tax, based upon the levy for the preceding year.

(c) If the stock is within the State on April 1st, it may be assessed for taxation by the assessor of the county where found as other property should be assessed, as of that date, regardless of the time that it was brought into the State.

(d) If brought into the State between April 1st and September 1st, it is liable to taxation for that year unless kept in the county for more than one year, in which latter event it will not be liable for taxation for the year in which it was brought into the State, but only for succeeding years.

(e) The question of liability for taxation is not affected in any way by the fact that a tax has or has not been paid upon the same property in another state, but is subject to the qualification that only one tax for the same year shall be collected within this State. So that in any of the cases enumerated, it is sufficient defense to the claim for a tax that such tax has already been paid in some county within this State.

The above constitutes an analysis of the statute in question. I am not unmindful of the fact that an early decision of our Supreme Court upon a somewhat similar statute casts some doubt upon its validity. To my mind, however, the duty of executive officers of the state is to enforce the law as prescribed by the legislature, leaving to the courts the question of its validity. If any taxpayer is dissatisfied with the operation of the law, I should welcome a test suit.

Question No. 2. Should the Printers' Home and the Modern Woodmen's Sanitarium at Colorado Springs be exempted from taxation by the county assessor? Both are fraternal and limited to members.

This question assumes knowledge which I do not possess as to the character of these institutions. Assuming, however, that they are established and maintained for the purpose of rendering gratuitous aid and assistance to needy members of the respec-

tive organizations contributing to their support, I am of the opinion that the buildings used exclusively for such purposes, with the grounds whereon the same are situated, are exempt from taxation.

Question No. 3. Are water rights assessable? Should they be valued and assessed separately from the land as improvements? When an individual or company owns water rights or ditch stock and does not own land, should such water rights or ditch stock be assessed, and if so, where?

Water rights being property not exempted by the Constitution or statutes of this State, from taxation, should be assessed. Under the express terms of the statute, water rights owned as appurtenances to land constitute improvements and should be so assessed. Water rights not appurtenant to land, as where owned by an individual or company owning no land, should be assessed at the residence of the owner.

Yours very truly,

FRED FARRAR,
Attorney General.
By FRANK C. WEST,
Assistant Attorney General.

(July 22, 1913.)

As to the duties and powers of the Colorado Tax Commission in relation to the assessment of railroad, telephone, telegraph, palace car, fast freight, express, and all other public utility companies.

The Colorado Tax Commission,
State House, Denver, Colorado.

Gentlemen: Replying to your favor of recent date submitting to us several questions, I desire to make the following statement as to the law governing the matters concerning which you inquire.

1. Is it the duty of the Tax Commission to assess all the property of a railroad company, or only such property as is used for the convenient and proper operation of its railways?

2. Is it the duty of the Tax Commission to assess all the property of telephone, telegraph, palace car, fast freight and express companies?

3. Is it the duty of the Tax Commission to assess all the property of public utilities companies not mentioned in interrogatories 1 and 2, whether such property is used in the operation of the business or not?

The foregoing questions may conveniently be discussed and answered together, as they involve a consideration of the same sections of the statutes and the correct interpretation thereof.

The several statutes authorizing assessment for purposes of taxation to be made by the Colorado Tax Commission and which are necessary to be considered in this connection, are as follows:

"The State Board of Equalization shall meet at the office of the Governor on the first Monday in April of each year, and shall meet from day to day thereafter until the business of said board as hereinafter provided shall be accomplished.

It shall be the duty of said Board to assess, at the full cash value, all the property, tangible and intangible in this State, used or controlled by railway companies, telegraph, telephone, palace cars, sleeping cars, fast freight and express companies; provided, however, that real estate and improvements thereon, owned by any railway company and not used for the convenient and proper operation of its railways, shall not be included in such assessments, but such real estate and improvements thereon shall be assessed by the proper county assessor in the same manner as other real estate and improvements in the county in which the same are situated. * * *

The said Board shall certify to the several county assessors, and also to the several county clerks of this State, the amount of value of the property assessed by the State Board, and the amount assessed as being within the county of such assessor and county clerk. They shall make such assessment and certify the same on or before the 15th day of June of each year."

Section 86, Chapter 3, Laws of 1902.
Section 5630, Revised Statutes 1908.

"All powers of original assessment of public utility corporations with other statutory powers, duties and privileges now exercised by the State Board of Equalization are hereby conferred upon the Colorado Tax Commission, provided that the powers and duties of original assessment so transferred by this Act shall continue to be exercised by the State Board of Equalization until June 15, 1911, after which they shall be exercised by the Commission."

Section 40, Chapter 216, Laws 1911.

"The term 'public utility' as used in this Act means and embraces each corporation, company, firm, individual, and association, their lessees, trustees, or receivers elected or appointed by any authority whatsoever and in this Act referred to as express company, telephone company, telegraph company, sleeping car company, car line company, railroad company, and also such power companies, pipe line companies, water companies and all other classes of companies, however owned or operated having a continuity of business in two or more counties in the State, and such term 'Public

Utility' shall include any plant or property owned or operated, or both, by any of such companies, corporations, firms, individuals or associations."

Section 41, Chapter 216, Laws 1911.

"All statutory powers, duties and privileges heretofore exercised by the State Board of Equalization are hereby conferred upon the Colorado Tax Commission, and *in addition thereto,* it shall be the duty of the Colorado Tax Commission to exercise *all powers of original assessment of all public utilities corporations as herein defined."*

Section 1, of House Bill No. 548, passed by the 19th General Assembly, amending Section 40, Chapter 216, Laws of 1911.

"The term 'Public Utility' as used in this Act, means and embraces each corporation, company, firm, individual and association, their lessees, trustees or receivers elected or appointed by any authority whatsoever, and in this act referred to as express company, telephone company, telegraph company, sleeping car company, car line company, railroad company, power company, pipe line company, water company, street railway company, gas company, lighting company and heating company. Said term 'Public Utility' shall also mean and embrace all other classes of companies however owned or operated and having a continuity of business in two or more counties in the State, and such term 'Public Utility' shall include any plant or property owned or operated or both, by any such companies or corporations, firms, individuals or associations."

Section 2 of House Bill No. 549 and amending Section 41, Chapter 216, Laws of 1911.

In an opinion of former Attorney General Griffith, rendered to the Colorado Tax Commission under date of June 10, 1911, and in which I concur, Sections 40 and 41 of Chapter 216, Session Laws 1911, were held to confer upon the Commission only the power of original assessment formerly vested by Section 86, Chapter 3, Laws 1902, in the State Board of Equalization. This power, as will be seen by reference to the Statute of 1902, did not extend to the assessment of real estate and improvements thereon owned by any railway company and not used for the convenient and proper operation of its railroads.

The questions resolve themselves, therefore, into an interpretation of Sections 1 and 2 of the Act of 1913 above set out.

I think it is evident from an examination of this act that it was the intention of the legislature largely to extend the powers of the Colorado Tax Commission. It will be noted that by Section 1 of said Act, it is provided, not only that all statutory

powers, etc., of the State Board of Equalization are conferred upon the Colorado Tax Commission, but that *"in addition thereto,* it shall be the duty of the Colorado Tax Commission to exercise *all powers of original assessment* of all public utility corporations as herein defined."

Section 2 of said Act, which contains definitions of the term "public utility", extends the scope of that designation by omitting the restriction of the term, in certain cases, to companies having a continuity of business in two or more counties, and from an examination of the two sections together, it seems evident that it was the intention of the legislature to vest in the Colorado Tax Commission the exclusive power of original assessment of all property classified as public utilities.

I conclude, therefore, and so advise you, that it is the duty of the Colorado Tax Commission to assess for taxation, all property within this State belonging to public utilities as defined by the Act of 1913, whether or not the same is used in the conduct of the business of such public utility.

4. Should the property of railroad, telegraph and telephone companies be distributed according to main line mileage or according to operated mileage?

5. What constitutes "operated mileage"?

In view of the various methods employed in the statutes to designate the property of public service corporations to be taxed, it requires an examination and comparison of a number of different sections to determine the true basis of assessment by the Colorado Tax Commission, and distribution of the assessed valuation among the several counties of the state.

By Section 86, Chapter 3, Laws 1902, the State Board of Equalization is required to assess all the property "used or controlled" by railway companies, telegraph, telephone, palace car, sleeping car, fast freight, and express companies. It is evident from the use of this language that it was not intended that any property of such companies should escape assessment because it was not operated.

By Section 95 of the same act, the railway companies are required to file with the clerk of the Board of Equalization, a sworn statement showing, among other things, the whole number of miles of main track operated *or controlled,* and the number of miles of telegraph and telephone wire *owned or controlled.* This statement is furnished as a basis for assessment, and it is apparent that the legislature did not, regard it as of importance in this connection whether or not the property in question was actually operated.

Section 97 of the same act requires a similar statement from telegraph and telephone companies, showing the whole number of miles of telegraph or telephone wire *operated* within the state and each county thereof. The language of this section is such as to

require an interpretation of the sense in which the legislature used the word "operated." Bearing in mind that, as shown above, the Board of Equalization (or, at the present time, the Colorado Tax Commission) is required to assess all the property used or controlled by such company, it is apparent, I think, that in using the word "operated" it was not intended to restrict or diminish the property to be assessed by the Board, but was intended, rather, to adopt some one word having the same meaning as the phrase "used or controlled."

As authority for such a construction, we find that in the case of Nagel vs. Missouri Pacific Railway Company, 75 Mo., 653, the expression "used and operated" as used in a petition in an action against the railroad for personal injuries, stating that the defendant "used and operated" a turn table in connection with its railroad, is held to be equivalent to saying that the defendant controlled such turn table.

This view receives support, also, from the provision of Section 107 of said act providing that whenever it shall be found that one corporation uses or controls any property belonging to another, such property may be assessed either to the corporation using or controlling it or to the corporation by which it is owned.

Again, I find that Section 106 of said act, in providing a method of determining the value for taxation within this State of the property of such company, provides that this State shall be entitled to tax the proportion of the total value of such property "that the mileage *of any such company* in this State bears to its total mileage wherever situated." There is certainly no restriction here to the mileage which may be operated, as being all that is liable to taxation.

By Section 109 of said act, the Board is required to transmit to the County Clerk of each county through which the track or line of any such company may extend, a statement showing the "length of the main track of such railway and the number of miles of such telegraph and telephone wire in such county, and the assessed value per mile of the same as fixed by ratable distribution of the assessed value of the whole property of such corporation, among the different counties of the State."

The same section further provides "Each county shall be entitled, for purpose of taxation, and shall tax, a share and part of the total value of the properties of each railway company, telegraph and telephone company which shall be to the whole value of the properties of such corporation as the number of miles of the railway or lines of telegraph or telephone wire operated by such corporation within the State bears to the total number of miles in such County."

It will be seen, then, that the mileage to be certified by the Board to the county clerk of each county is the main line mileage, while the provision for the taxation of the property by the

county is that it shall be entitled to a proportion of the property based on the number of miles operated. Inasmuch as no provision is made for determining the number of miles of railroad, telephone or telegraph lines operated in different counties of this State, in distinction from the number of miles owned or controlled, I think it is apparent that the term 'operated' here is not used in contradistinction to the expression 'used or controlled' but that it is regarded as synonymous with such expression. It is impossible to believe that elaborate provision would be made for determining and certifying to the proper officers of each county, a statement showing the number of miles of main line railway track or telephone and telegraph wire passing through such county if the county's share of the assessed valuation of the property were to be determined upon an entirely different basis, especially when no means is provided, and no requirement is made by the statute, for the determination of the number of miles operated.

I conclude, therefore, that the word "operated" as used in this connection, is intended to include property which is either used by the company or owned or controlled, so that it may, at its pleasure, use it for the purpose of its business; in other words, that the word "operated" is used not to restrict the powers of the Board of Equalization or the Colorado Tax Commission, but to enlarge them.

I find, also, that Section 110 of said Act provides that after the statement above referred to is received by the county court from the State Board of Equalization, the County Commissioners in each county shall make and enter an order declaring the length of the *main track* in each school district and in each municipal corporation within the county, and the amount of the assessment against the same for the benefit of such school district or municipal corporation. It is apparent from the language of this section that it was the intention of the legislature to apportion the taxes according to the mileage of such main track, or, in the case of telegraph or telephone companies, the mileage of telephone or telegraph wires used, owned or controlled.

6. When a railroad has valuable terminals in other states and terminals of much less value in Colorado, should any deduction be made on this account when the valuation for assessment is determined?

The method to be pursued in the assessment of property of railroad companies whose lines extend without the State is prescribed by Sections 60, 61 and 106, Chapter 3, Laws 1902, which it will not be necessary to set out herein.

These sections, in brief, require the corporate property to be valued in its entirety and that of such valuation there be assessed for taxation to this State, such a proportion as the number of miles of track in this State bears to the entire mileage of the company. Before making this division, however, you are authorized

to deduct from the total value of the property, property of such corporations in other States or territories *"not connected directly with the operation of the corporate business."* No other deductions are authorized by the statute.

It has been argued before your Board, however, by representatives of the railroad companies, that unless the value of terminal properties owned by the railroads in other states be deducted from the valuation of the entire corporate property, upon which the taxes of this State are levied, the result will be an attempt by Colorado to tax property outside its jurisdiction. A number of cases from the United States Courts have been cited in support of that contention, and I have examined, with care, these cases and many others upon the question involved. From such examination, I find that the validity of statutes prescribing a method of valuing corporate property identical with that fixed by our statutes has been repeatedly upheld by the Supreme Court of the United States, and the method in question had been commended as being essentially fair and perhaps the fairest that could be adopted. It is true that in some of the recent decisions, it has been suggested that a different conclusion might be reached if it were made to appear that the property of the railroad company situate outside the state imposing the tax were of exceptional value, greatly in excess of the value of the property within such state. In no case, however, has it been held that an assessment or a tax was invalid because of such disparity in the values of property within and without a state, and upon reflection, I am convinced that where the excess in value consists in property used in furtherance of the business of the railroad company, a tax upon the proportion fixed by the mileage within the state, of the entire value of the corporate property, including such exceptionally valuable portions, would be upheld.

It would seem to me that this conclusion necessarily follows from the decisions that the method in question is a proper one in the absence of exceptional circumstances. These decisions are based upon a recognition of the fact that railroad property is peculiar in character and in the elements which give it value. The courts have repeatedly pointed out that the value of railroad property does not consist in the sum of the values of the land occupied by the right of way, the materials used in the construction of the road, and the separate value of the personal property owned, but that its value and the value of any portion thereof is due to the fact that by the union of the various portions of the road, a continuous line for traffic is created, constituting an additional intangible element of value which may be properly apportioned to all parts of the property upon a mileage basis. This view necessarily recognizes that from the standpoint of cost of construction and in many other features ordinarily affecting values, different portions would vary. It is perfectly evident that the entire value of a railroad property and the value of each por-

tion thereof, depends to a very great extent, upon the terminal facilities possessed by the railroad company and used in the operation of the road. It may safely be said that every mile of railroad within this State, owned by any railroad company, would be greatly affected in valuation by the acquisition or loss by the company of terminal facilities in cities in other states, and it is perfectly evident that the converse is also true,—that if the termini of the road were separated from the rest of the system, their exceptional value would disappear. It must follow, therefore, that to recognize the value arising from the possession of terminals in foreign states, and to increase the assessment for taxation on that account is not, in any sense, to tax property outside the state.

I conclude, therefore, and so advise you, that in assessing railroad properties, no deduction should be made because of the value of terminal facilities in other states used in the operation of the railway system of which the railway in Colorado constitutes a part.

7. When the unit value of a railroad is found for Colorado, should it be distributed equally over all the mileage of the road in the State? Should the Arkansas Valley Lines be valued the same per mile as the main line of the Santa Fe?

In form in which this interrogatory is stated, two separate, though connected, questions are presented.

The so-called Arkansas Valley Lines constitute an integral part of the system of the Atchison, Topeka & Santa Fe Railroad Company, and for the purpose of assessing the property of that company in Colorado, there is no reason why these lines should be separated from the other portions of the system, and in my opinion, the statutes under which the commission acts, furnish no warrant whatever for so doing.

In arriving at the value, for purposes of taxation, of the property of the Santa Fe in this State, the method prescribed by the statute should be strictly followed, and the Arkansas Valley lines be included as a portion of the mileage upon which the average value per mile is fixed. If, as is claimed, these lines are of much less value than other portions of the Santa Fe system, that fact will necessarily reduce the average value per mile of all portions of the system, so that no hardship will be worked upon the company.

This is not only a fair and reasonable method of fixing the valuation of the property of the company for taxation, but is the only one authorized by the statute. If this method of assessment is followed, it seems to me plain that in the distribution of the assessed values among the various counties through which lines belonging to the Santa Fe system pass, you will necessarily assign

to each county a value fixed at an equal valuation per mile of the proportion of the road passing through such county.

Yours very truly,

FRED FARRAR,
Attorney General.
By FRANK C. WEST,
Assistant Attorney General.

(July 24, 1913.)

Interpretation of certain sections of the 1913 insurance law (S. L. 1913, page 320).

Hon. Saul Epsteen,
Commissioner of Insurance,
Denver, Colorado.

Dear Sir: In reply to your inquiry of July 12, 1913, wherein you set forth your interpretations of certain sections of the new Insurance Laws as follows:

a. (Sec. 21, Art. 8) Prohibits a local licensed agent from paying an unlicensed agent or broker.

b. (Sec. 38) Requires that all insurance contracts must be made through resident agents.

c. (Sec. 62, Art. 1.) Requires that a resident agent must approve every risk and receive the commission thereon.

d. (Sec. 62, Art. 1.) Prohibits the signing of any insurance policy in blank.

and request an opinion as to whether same are correct, I desire to state that, after carefully examining the new insurance law, I am of the opinion that your interpretations of the foregoing sections as hereinbefore set forth are correct.

Yours very truly,

FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant Attorney General.

(July 25, 1913.)

Under what circumstances and to what extent a person has the prior right to seepage or spring waters on his own land.

Mr. L. C. Rater,
Rifle, Colorado.

Dear Sir: I recieved from you, under date of July 11th, a letter in which you state that there are three springs upon land

belonging to you, and you ask whether or not you have the right to use this water.

In reply, I beg to advise that the statutes of this State provide:

> "That the person upon whose lands the seepage or spring waters first arise shall have the prior right to such water if capable of being used upon his lands."

This answers your question, except that it has been held that if these springs form a definite head to, or directly supply a stream from which water is appropriated by other persons, then you do not have a prior right to the use of the springs.

I also doubt whether or not you may divert the water from the lands upon which these springs arise, by a ditch, to other lands belonging to you where that ditch crosses or has to cross intervening lands which you do not own. In other words, I am inclined to believe that you will be allowed to use this water only in the event that the springs do not directly feed some stream and also in the event that you can use it upon your land without taking it in a ditch upon or across any other land than your own. On this last point, however, there has never been a decision from our Supreme Court.

I remain,

Yours very truly,

FRED FARRAR,
Attorney General.

(July 31, 1913.)

Humane officers are not authorized as such to carry concealed weapons.

Deputy Game Wardens, under R. S. 1908, Sec. 2732, have the powers of sheriffs and constables, and may therefore carry concealed weapons when on duty (S. L. 1911, p. 252).

Mr. J. C. Timbrel, Sheriff,
Walden, Colorado.

Dear Sir: In answer to your letter of the 29th, in which you inquire: First, as to whether or not Humane Officers are allowed to carry revolvers, and if so, while they are off duty, and Second, whether or not Deputy Game Wardens can carry revolvers on or off duty, beg leave to submit the following:

I can find no statutory provision giving Humane Officers the right to carry concealed revolvers at any time.

Section 2732, Revised Statutes 1908, states:

> "In their performance of their duties, the Commissioner and wardens shall have all rights and powers throughout the

State of sheriffs and constables in their respective Counties, except as herein otherwise provided."

From this provision it can be seen that Deputy Game Wardens have the right to carry their revolvers the same as sheriffs and constables.

An act was passed by the Legislature in 1911, found in the Session Laws of 1911, pages 251 and 252, in regard to concealed weapons. There are certain provisions in this act making it a misdemeanor for anyone to carry concealed weapons unless authorized to do so by certain persons. On page 252 is found this provision:

"The foregoing provisions hereof shall not apply to any sheriff or deputy sheriff, constable, policeman or other peace officer, while on duty within his city, town or county."

From this it is clear that concealed weapons may be carried only for duty purposes. It is my opinion, however, that a deputy game warden, like a sheriff, is on duty at all hours, that is, he has not any office hours. If I am right in this proposition, the deputy warden would be within his rights in carrying his revolver at all times.

In regard to the humane officers, they would not be allowed to carry concealed weapons at all, save in the cases where they are deputy sheriffs as well as humane officers, and in such cases, they can carry them on account of being deputy sheriffs.

Hoping this will clear the matter up for you, I remain,

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

(August 4, 1913.)

Appointment of probation officers and payment of their salaries. How investigators under Mother's Compensation Act shall be paid.

Judge E. H. Haynes,
Burlington, Colorado.

Dear Sir: In reply to your inquiry of July 30, 1913, wherein you submit the following:

a. Whether the County Judge of your County has the right to appoint a Probation Officer, and fix the salary?

b. How would the salary be paid, and by whom and how often?

c. How and in what manner would the Investigators under the Mother's Compensation Act be paid?

I desire to state in your County, under the provisions of the act of 1911, page 542, the County Judge has the right to appoint a Probation Officer; and fix the salary, which must not exceed $1200.00 per year.

The salary must be paid in equal monthly installments by the board of county commissioners, out of the public funds, as provided in section 593, Revised Statutes 1908.

The Mother's Compensation Act provides that in counties with a population of 100,000 or less, the county court

> "shall appoint proper persons for the purpose of investigation, visitation, and keeping of records and the making of reports in cases requiring relief under this act. The details as to the number of such investigators, their rights, duties and powers in addition to that of investigators, of such cases, their *compensation,* the *limitations* thereon, and the authority of the county or city and county required to provide for such compensation *shall be as provided by law for the employment of probation officers in such juvenile and county courts.*"

Therefore the number and compensation of such investigators is governed by the Act of 1911 (Session Laws 1911, page 542).

The manner of paying their salaries shall be as provided in section 593, Revised Statutes, 1908:

> "In equal monthly installments by the board of County Commissioners out of the Public Funds."

Of course you understand that in order to make the payments out of the public funds, it will be necessary for the County Commissioners to make an annual appropriation for this purpose. The expense of carrying into effect the provisions of the Mother's Compensation Act in your County must not exceed the amount of the appropriation.

Very truly yours,

FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant.

(August 7, 1913.)

County Commissioners may be paid the statutory per diem for time necessarily spent in performing the duties under the State Highway Commission Act (S. L. 1913, p. 286), subject to the $500 limitation of maximum salary in third, fourth and fifth class counties.

Hon. David P. Howard,
County Attorney, Grand County,
Hot Sulphur Springs, Colorado.

Dear Sir: I am in receipt of your inquiry as to the authority of the County Commissioners to receive pay for the time devoted by them to the investigation, inspection and construction of County roads, in addition to the per diem allowed to them by statute for attendance upon meetings of the Board.

The provision for compensation of County Commissioners is found, as you know, in Section 2576 of the Revised Statutes of 1908, and reads as follows:

> "In counties of every class in the State, the County Commissioners shall be allowed five dollars per day for each day necessarily spent in the performance of their duties as Commissioners, and ten cents per mile for the distance actually traveled in going to and returning from the place of meeting."

In addition, there is the limitation of $500.00 for Commissioners in counties of the third, fourth and fifth classes.

It seems to me that this statute is sufficient to permit a charge of $5.00 per day for time necessarily spent by the Commissioners in the performance of any duty imposed upon Commissioners by law. If your question refers to the duties which are imposed upon the County Commissioners by the recent State Highway Act, I think that a charge of $5.00 per diem for the time required in the performance of said duties is permissible. It seems to me that a liberal construction should be applied in favor of the compensation of County Commissioners wherever the performance of a duty or the exercise of a power would reasonably tend to benefit the county which they serve.

The McGovern case in 131 Pacific, is to be distinguished inasmuch as there the law did not have a corresponding provision for compensation of coroners, but, on the contrary, provided only specific fees for certain enumerated services.

Trusting that I have covered the ground intended to be suggested by your question, I am,

Very truly yours,

FRED FARRAR,
Attorney General.

By FRANCIS E. BOUCK,
Deputy.

(August 13, 1913.)

Colorado Constitution, Art. V., Sec. 30, prevents the 1913 salary and fee acts (S. L. 1913, pp. 160 and 276) from applying to present incumbents so as to increase or diminish their salaries or emoluments.

The incumbent may charge the new fees when they equal or exceed the old; and whenever the new fees are less than the old, the old fees may be charged for the purpose of paying the old salary.

Hon. Louis Vogt,
Member of the Nineteenth General Assembly,
Burlington, Colorado.

Dear Sir: I am in receipt of your recent letter asking an opinion upon the effect which Senate Bill No. 186 and Senate Bill No. 187 will respectively have upon present incumbents of county offices.

Senate Bill No. 186 makes a reclassification of counties for salary purposes, and Senate Bill No. 187 makes a like reclassification for fee purposes. Both acts became effective on August 12, 1913.

Section 30 of Article V. of the Colorado Constitution is as follows:

> "Except as otherwise provided in this constitution, no law shall extend the term of any public officer, or increase or diminish his salary or emoluments after his election or appointment; *Provided,* That on and after the first day of March, A. D. 1881, the salaries of the following designated public officers, including those thereof who may then be incumbents of such offices, shall be as herein provided, viz:
>
> The governor shall receive an annual salary of five thousand dollars, and the further sum of fifteen hundred dollars for the payment of a private secretary.
>
> The judges of the supreme courts shall each receive an annual salary of five thousand dollars.
>
> The judges of the district courts shall each receive an annual salary of four thousand dollars."

It is important to determine how this Section affects the application of the two acts mentioned.

In the numerous cases where, by the new acts, a County is placed in the same class, for both fee and salary purposes, as under the former law, there will of course be no change whatever from the old procedure. The fees will be the same as before, and out of those fees the old salaries will continue to be paid.

In the case of a County which goes from a higher class to a lower class, the effect of the new law, if applied, is to diminish the salary and to increase the individual fees. By reason of the Constitutional provision above quoted, those in office under the

old law are exempt from the decrease in salary. On the other hand, there seems no legal or constitutional objection to charging the higher fees pursuant to the new fee act, since the salary of the officer now in office remains the same in any event, and any surplus of fees, under our statutes, goes into the County Treasury. It appears permissible, therefore, to charge the higher fee, at least unless and until the point be properly raised and determined to the contrary.

Where a county is transferred by the new acts from a lower class to a higher, however, the application of those acts to present incumbents would produce the result of increasing the salary and diminishing the fees. It is a matter of common knowledge that in many of our counties one or more of the county officers do not get their statutory salaries, the fees being insufficient to reach the designated amounts. Where this condition exists, the evil would be aggravated by decrease in the fees. Other officers in these and other counties would find themselves in a like predicament, by finding that salaries which were perhaps barely eked out with the higher fees provided before the reclassification was made, would fall considerably short if the fees were lessened. In such an extremity, a diminution of fees certainly would have the appearance of diminishing the emoluments of a public officer within the meaning of Section 30 of Article V. above cited. I therefore believe that the officer holding office at the time the new acts became effective has the constitutional right—in the counties which have gone from a lower to a higher class—to charge the old, or higher, fees until he is succeeded, either by himself or by another, under a new appointment or election.

To sum up:

(1) It is my opinion that the county officer in office on August 12, 1913, has a constitutional right to an undiminished salary, whether Senate Bill No. 186 has changed the classification of his county or not.

(2) It is further my opinion that the new fees provided for by Senate Bill No. 187 should be charged in all cases where they equal or exceed the fees hitherto in force under the existing statutes; but that in every other case the old fees continue in force, for the purpose of paying a statutory salary, until the particular incumbent who was holding a county office on August 12, 1913, ceases to hold his office under his last preceding appointment or election.

It should be remembered that the opinion as just expressed does not, in any way, attack the constitutionality or validity of the new acts. They are both assumed to be valid; the opinion merely reads into them the constitutional provision already quoted and declares that a change of salary and diminution of fees are limited, in their application, to those persons who are appointed or elected to a county office after the acts go into effect.

In this connection, I desire to mention, as not having been overlooked, the case of Whitney et al. vs. Teichfuss et al., 11 Colo., 555. There the question of the applicability of a reclassification law was not considered from the standpoint of the constitution, which was not referred to in the case, nor was a public officer in any way connected with the litigation. It was held that after reclassification the costs of an action were to be taxed according to the second class, to which Chaffee County had been raised from the third class. The opinion is by Supreme Court Commissioner Stallcup. It is brief and cites no authorities that contravene the opinion I have given. It may be mentioned that at the time that case was decided, there was no salary fixed for the clerk of a district court, and if the constitutional question which I have above considered had been in any way involved in the case, the decision would undoubtedly have exempted the incumbent from the operation of the new law by which his fees would have been diminished, since this diminution would, in the absence of a salary limitation especially, have amounted to a diminution of the emoluments of the office.

To answer your questions specifically with reference to Kit Carson County, I beg to say, first, that according to my opinion Senate Bill No. 186, changing the salaries of county officers, does not apply to the officers of the county who were in office on August 12, 1913, but will apply to their successors; and, secondly, that Senate Bill No. 187, classifying counties for fee purposes, does not apply to the officers of Kit Carson County who were in office on August 12, 1913, they having the constitutional right to charge the old fees for the satisfaction of their statutory salaries until they are supplanted by their successors.

Should there be any additional questions arising in connection with the new acts, I shall be very glad to enlighten you to the best of my ability.

Very truly yours,

FRED FARRAR,
Attorney General.

By FRANCIS E. BOUCK,
Deputy.

(August 20, 1913.)

The County Treasurer, under Section 2537 of the Revised Statutes of 1908, is entitled to one per cent of the money received from the State for School Purposes and the Forest Reserve; but not of the money received from the Highway Commission for the construction of roads.

Hon. George P. Stewart,
County Treasurer Douglas County,
Castle Rock, Colorado.

Dear Sir: I have your letter of Aug. 12, 1913, wherein you make inquiry as to whether the county treasurer is entitled to

a commission of one per cent for receiving the moneys from the state for school purposes, Forest Reserve and from the Highway Commission.

I am of the opinion that that clause of Section 2537 of the Revised Statutes, 1908, which allows the county treasurer one per cent "for receiving all moneys other than taxes in counties of every class" would apply to the moneys received from the state for school purposes and from the Forest Reserve, and his compensation would be limited to one per cent upon such moneys.

I am also of the opinion that it does not apply to the moneys received from the Highway Commission. From a careful consideration of the act creating the Highway Commission (Session Laws 1913) it is clear that it was the intention of the Legislature that the entire amount paid to the county treasurer by the Highway Commission, should be used in the construction and repairing of roads and for no other purpose. Of course you understand that the commission of one per cent, allowed from the School Fund and Forest Reserve, is turned into the general fund of the county by the treasurer and credited to him as part of his fees. His compensation as county treasurer is governed by Section 2570, Revised Statutes, 1908.

Very truly yours,

FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant.

(August 20, 1913.)

Power of the Commissioner of Insurance as to incurring necessary expense of investigating any agency of any insurance company doing business in Colorado.

The State Auditing Board,
Capitol Building,
Denver, Colorado.

Gentlemen: I am in receipt of your inquiry of August 19, as to whether the expense contemplated in the letter which you enclose from the Insurance Commissioner of North Carolina, would be legal.

Under Section 12 of the Insurance Code of 1913, the Commissioner of Insurance of this State is authorized to

> " * * * examine or investigate * * * any agency of any company doing business in this State; provided that the Commissioner may employ competent persons other than the Actuary or examiners of his office to make examinations of such companies; and provided further that the consent

of the Governor must be obtained to all examinations, inquiries or investigations."

By complying with these provisions, the Commissioner may incur the necessary expense, which will, of course, be merely the expense of his own department and not that of any other State.

In so far as a requisition is for the purpose of authorizing such proper expense, your board is authorized in honoring and approving the same, provided the Governor gives his consent to making the proposed investigation.

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(September 16, 1913.)

The socalled Daily Turnover Law (S. L. 1913, p. 580), requiring public funds of departments, officers, etc., to be turned over daily to the State Treasurer, does not apply to that portion of the revenue collected by the Secretary of State under the Motor Vehicle Law (S. L. 1913, p. 415) which belongs to the counties, but does apply to the portion which goes into the State Road Fund.

Honorable James B. Pearce,
Secretary of State,
Denver, Colorado.

Dear Sir: I am in receipt of your inquiry as to whether the socalled "Daily Turn-over Law" (Session Laws 1913, page 580) applies to collections made by you under the Motor Vehicle Law, (Session Laws 1913, page 415) and if so, to what extent.

The "Daily Turn-over Law", the full title of which is: "An Act concerning public funds belonging to the State or any Institution, Department, Bureau or Officer thereof, providing for the custody, management, receipting, withdrawal and reporting of the same, and for penalties for the violation of the provisions contained therein," was approved on May 1st, 1913. It has an emergency clause and as it also contains a section declaring the act necessary for the immediate preservation of the public safety, the act was not subject to the referendum; hence it went into effect the same day.

The Motor Vehicle Law was approved April 12, 1913. It would be effective July 11, 1913, had it not been subject to the referendum; but, being so subject, it did not become effective until July 15, 1913, the 91st day after the adjournment of the Nineteenth General Assembly.

Under this act you, as Secretary of State, are required to collect the revenue from motor vehicle licenses. Section 7

authorizes you to appoint any county clerk as your agent in his particular county.

Section 14 is as follows:

> "Fifty per cent of the revenue collected from the registration of motor vehicles and motorcycles shall be paid to the treasurer of the several counties of the State in amounts proportioned upon the revenue derived from the registration of motor vehicles and motorcycles owned in or registered from such counties respectively; the amounts so paid to be credited to the road funds of such counties. The remaining fifty per cent of such revenues shall be paid by the Secretary of State to the State Treasurer, to be credited to the State Road Fund and to be used for the improvement and maintenance of the roads of this State."

It is apparent from the above that the Motor Vehicle Law itself does not contemplate, in the case of the fifty per cent properly belonging to a county, the roundabout method which would be involved in payment by you to the State Treasurer, issuance of a voucher to be filed with the State Auditor, issuance by the State Auditor of a warrant contersigned and registered by the State Treasurer and finally payment by the State Treasurer. On the contrary, the fifty per cent referred to in the first sentence of said section 14 belongs to the counties and you should pay to the county treasurers the amounts due their respective counties.

That portion of the revenue which goes to the State Road Fund, under section 14, on the other hand, should be paid by you to the State Treasurer in accordance with the "Daily Turnover Law".

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(September 20, 1913.)

The socalled Daily Turnover Law (S. L. 1913, p. 580), requiring public funds of departments, officers, etc., to be paid over daily to the State Treasurer, applies to the State Board of Stock Inspection Commissioners' "brand inspection fund" and "stallion fund," but not to its "estray fund."

The State Board of Stock Inspection Commissioners,
Capitol Building, Denver, Colorado.

Gentlemen: You state that your board has three funds, known respectively as the "Estray Fund," the "Brand Inspection Fund" and the "Stallion Fund," and you inquire how each of

these funds is to be handled in view of the provisions of the so-called "Daily Turnover Law," Session Laws 1913, page 580.

In my opinion, the brand inspection fund and the stallion fund are subject to the act referred to and your board should make daily returns to the State Treasurer in accordance with its provisions.

As regards the estray fund, which is governed by the terms of Sections 6417 to 6419 inclusive, of the Revised Statutes of Colorado, 1908, and other kindred sections, it appears that the sums paid into this fund are in no sense public funds belonging to the State or any institution, department, bureau or officer of the State, even in the large sense in which the body of the act assumes to define those terms. The moneys in the estray fund are received from the sale of estrays. To show the peculiar nature of this fund, I desire to quote from certain sections of the Revised Statutes:

"6415. * * * if any inspector shall find any animal or animals bearing marks and brands other than those of the owner of the other cattle in said shipment * * * the inspector shall forthwith declare them to be estrays, and shall take possession of the same for the state board of stock inspection commissioners, *and dispose of the same according to the rules and regulations prescribed by said board.*

"6416. The state board of stock inspection commissioners are hereby authorized and empowered to make such reasonable rules and regulations regarding the disposition of estrays taken up by inspectors, * * * as may seem to said board to be proper and just, *and for the best interests of the owners of the same.*

"6417. All moneys coming into the hands of the secretary of the state board * * * from the sale of estray animals shall constitute and be known as the "Estray" fund, *and shall be kept in an account separate and distinct from other accounts, in conformity with regulations to be prescribed by said board.*

"6418. Any person, persons, association or corporation establishing to the satisfaction of the said stock inspection board the ownership to any estray animals which shall have been sold by said board, and the amount realized from such sale deposited in the estray fund, as herein provided, *shall be forthwith paid* the amount for which said animal or animals were sold, less the sum of one (1) dollar for each animal, which shall be retained by said board and placed in the brand inspection fund.

"6419. Any and all moneys now in the estray fund, derived from the sale of estray animals by the state board of stock inspection commissioners, or any inspector acting under the authority of said board, which has been in the pos-

session of said board of stock inspection commissioners for six (6) years or longer from the date of sale of such estray animal or animals, and for which no valid claim has been made, shall be turned into the brand inspection fund of said board, and all claims for moneys from the estray fund made by the owners of cattle sold as estrays by said board, after the passage of this act, shall be made within three (3) years from the date of sale of the same, or the same shall be forever barred and no moneys shall be paid upon claims made after three (3) years from the date of such sale. The funds so transferred from the estray fund may be used by the said board, under proper vouchers, for the prosecution of persons charged with larceny of live stock and for other and general expenses of the board."

I also refer, in passing, to Section 6426 and those following, at pages 1490 and 91 of the Revised Statutes of 1908.

Under the statutes cited, the conclusion seems irresistible that in order to enable your board to administer the estray fund according to the true intent of the law, all moneys in said estray fund must be treated as moneys to be kept by and in the hands of the board, separate and distinct from all other funds or accounts, every part thereof to be deemed merely trust funds belonging to the particular owner of an estray unless and until the lapse of time results in a transfer from the estray fund to the brand inspection fund according to the terms of the statute.

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(October 7, 1913.)

No provision exists for transferring to the State general fund any moneys paid into the Coal Mine Inspection Fund established by §167 of the coal mining law (S. L. 1913, p. 162).

Hon. James Dalrymple,
Chief Inspector of Coal Mines,
Denver, Colo.

Dear Sir: In reply to your inquiry of October 2nd, I beg to inform you that Section 167 of the new coal mining law, passed by the 19th General Assembly, establishes a permanent fund, "The Coal Mine Inspection Fund," and the law does not provide for the transfer of any unused balance from that fund to the general fund of the State.

You will notice that Section 168 of the act mentioned provides for audit and report by your department at the end of each year.

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(November 10, 1913.)

County Mutual Protective Associations can only operate in one county; except The Grange or similar fraternal organizations operating upon the lodge plan.

Hon. Saul Epsteen,
Commissioner of Insurance,
Denver, Colorado.

Dear Sir: In regard to the Articles of Incorporation of The Denver Fire Insurance Protective Association, a certified copy of which was referred by you to this office for my approval as provided by law, I am unable to approve same for the following reason:

Article Seven of the articles of incorporation provides that "the operation and business of said corporation shall be carried on and conducted in the city and county of Denver and *other counties within the state of Colorado.*"

This company has sought to incorporate under the provisions of Section 74, Session Laws 1913, page 367, and therefore its operations must be confined to only one county in the state.

That such was the intention of the legislature is clearly shown by a careful consideration of the entire section. The section has been entitled, by the legislature "County Mutual Protective Associations."

The latter part of the first paragraph of said section contains the following: "Providing that The *Grange*, or similar *fraternal organizations* operating upon the lodge plan may operate under this section in *all* or *any* of the counties of this State."

The fact that the legislature expressly limited to The Grange and fraternal organizations, the right to operate in *all* or *any* of the *counties* of this state, is an exclusion of such a privilege to all other companies coming under the provisions of this section.

That the legislature intended to limit the operations of such companies to one county is clear from a comparison of section 74 of the act of 1913 with the act of 1907, Revised Statutes 1908, Section 3157. It was therein provided that such companies could insure property "situated in the county in which the head-

quarters of the association are located, and in not more than *four other counties adjacent thereto.*"

The act of 1913 which repealed the act of 1907, and in so doing re-enacted portions thereof, failed to re-enact the provision regarding "four other counties adjacent thereto."

Therefore it will be necessary for this company to amend its articles of incorporation by confining its operations to one county in the state.

Very truly yours,
FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant.

(November 12, 1913.)

School can be held only five days a week; and holding classes from Monday to Saturday inclusive, even though the total number of hours is only twenty-five for each pupil, is holding school six days a week.

Mrs. Mary C. C. Bradford,
Superintendent Public Instruction,
Denver, Colorado.

Dear Madam: In answer to a question submitted to you by Superintendent Slutz of the Pueblo Schools in regard to the legality of holding school six days in the week, provided the total number of hours does not exceed twenty-five for any one pupil, I desire to say:

The superintendent reports that the Pueblo schools are crowded and he has enacted a plan to have a double shift which will increase the capacity of the schools. One teacher reports in the morning with forty pupils from 8:00 to 12:10; the other teacher with forty pupils in the afternoon from 12:20 to 4:30. Saturdays are included to make the full twenty-five hours. He says that there are a number of families in Pueblo who raise an objection to sending their children to school on Saturdays owing to the fact that it is their religious day.

The answer to the question depends upon the construction to be given to Section 6013, Revised Statutes of 1908, which says:

> "A school month shall be four weeks; a school week, five days, and a school day shall not exceed six hours excluding the time of intermission at noon."

Since the passage of this law, schools have been held from Monday to Friday, inclusive; Saturday has been a holiday. No doubt, at the time of the passage of the act, also, the prevailing custom in Colorado and elsewhere, was from Monday to Friday.

A day is a space of twenty-four hours from midnight to mid-

night. From midnight Monday to noon Tuesday and from midnight Tuesday to noon Wednesday could not be considered as making one day, because the total number of hours was twenty-four. Under the decisions, the twenty-four hours must be consecutive.

The statute says a school day shall not exceed six hours, excluding the time of intermission at noon. The plain import of that language is that the six hours mentioned must be consecutive. When it excludes time of intermission at noon for lunch, it is clearly the intent of the legislature that the pupils should attend in the morning, have dinner, then go again in the afternoon. Half of Friday and half of Saturday does not constitute a day within the meaning of that statute, "A school week shall consist of five days." In the case submitted, the children are going six days a week, even though they only attend four hours and ten minutes a day. The statute says the day shall not exceed six hours, so it is immaterial if they only attend two hours, it would still constitute a day within the meaning of the legislature.

My conclusion therefore is that the statute contemplates the holding of school only on five days of the week. This would exclude holding classes on Saturday.

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

(December 2, 1913.)

A foreign corporation doing an insurance business in Colorado must comply with the statutory provisions governing foreign corporations in general, except as modified by Sec. 23 of the new insurance code. (S. L. 1913, p. 320.)

Hon. James B. Pearce,
Secretary of State,
Denver, Colorado.

Dear Sir: Your favor of November 21st, 1913, submitting an inquiry as to whether foreign insurance companies are required by the statutes now in force to file certified copies of their articles of incorporation, of the corporation laws of the state in which they are incorporated, certificates designating the place of business and agent and affidavits in regard to the capital stock, was received about ten days ago.

In view of the importance of the question presented and of the number of statutory provisions necessary to be examined, I have delayed answering until I could take time to make a thorough investigation.

By Section 916, Revised Statutes of 1908, every foreign corporation seeking to do business within this state is required to

file in the office of the Secretary of State, a copy of its charter, or in case it is incorporated under general incorporation laws, a copy of its articles of incorporation and of the incorporation law, duly authenticated.

By Section 917, Revised Statutes 1908, such corporations are likewise required to make and file in the office of the Secretary of State, and in the office of the recorder of deeds of the county in which such business is carried on, a certificate, designating the principal place of business within this state and the agent upon whom process may be served. This section contains also the following provision:

> "And such corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon such corporations of like character organized under the general laws of this state, and shall have no other or greater powers."

The 16th General Assembly enacted a comprehensive statute covering the subject of insurance, which statute constitutes Chapter 193, Session Laws 1907. This statute did not, in terms, repeal either of the previous statutes above referred to, but contains a clause repealing all acts and parts of acts in conflict therewith.

The question is thus presented whether the prior statutes referred to are in conflict with the insurance law of 1907, which contains quite elaborate provisions for the filing of certified copies of articles of incorporation with the commissioner of insurance, to whom also insurance companies are required to make annual reports. It is evident that the requirement that the articles and other documents be filed with the secretary of state is not necessarily in conflict with the requirement that they also be filed with the commissioner of insurance. It is argued, however, that as the insurance act furnishes a complete provision for the regulation and supervision of such companies with specific requirements as to filing such documents as are in question with the commissioner of insurance, prior statutes providing a different method are repealed by implication.

The rule as to repeals by implication has been thus stated by a leading authority:

> "There must be such a manifest and total repugnance that the two enactments cannot stand. The earliest statute continues in force unless the two are clearly inconsistent with and repugnant to each other, or unless, in the latter statute, some express notice is taken of the former, plainly indicating an intention to repeal it; and when two acts are seemingly repugnant, they should, if possible, be so construed that the later may not operate as a repeal by implication of the former."
>
> Sutherland Statutory Construction, 2d Ed. p. 465.

It seems plain to me that the legislature did not regard the act of 1907 and the provisions of the prior acts above referred to as repugnant, since by Section 30 of the act of 1907 (being Section 3117 R. S. 1908) it is provided that when individuals shall associate together and become incorporated in accordance with the provisions of the statutes of this state for the purpose of conducting the business of insurance, they shall file a copy of their articles of incorporation with the commissioner of insurance, etc.

The statutes of this state relating to corporations, and specifically referred to by this section, require as one step in the incorporation, the filing of the articles of incorporation with the secretary of state. It will be seen, therefore, that as to domestic corporations at least, the legislature did not believe that in enacting the statute of 1907 relating to insurance, it was providing a substitute for the method of incorporation previously provided by the statutes of this state.

The 18th General Assembly passed an act with reference to the fees of foreign corporations (Chapter 102, Laws 1911). This act, however, has, in my opinion, no bearing upon the question of the necessity on the part of foreign insurance companies for filing anything in the office of the secretary of state. It merely amends the prior statute by making the amount of fees dependent upon the amount of the capital of the corporation employed within this state.

The 19th General Assembly re-codified the insurance laws of the state by the enactment of Chapter 99, Session Laws 1913. Like the insurance law of 1907, this statute fails specifically to repeal either of the sections of the incorporation statute referred to in the first part of this letter, but it also contains a general clause repealing all acts and parts of acts in conflict therewith.

By Section 23 of this statute, foreign insurance companies are required to file certified copies of their charter or articles of incorporation with the commissioner of insurance. This section also contains the following provision:

> "That all foreign insurance companies hereafter applying for authority to do business in this State, shall, for filing the articles required by this section, pay to the Commissioner the same fee as that required by the Statutes for filing the same document or documents with the Secretary of State; but in no case shall the fee paid to the Commissioner be less than twenty-five dollars ($25). After filing its articles of incorporation or charter with the Secretary of State, no insurance company shall be required to file its annual report or any other instrument (except amendments to said articles of incorporation or charter) in the office of the Secretary of State or to pay to the Secretary of State an annual corporation tax."

It cannot be said of this section that it contains a specific requirement that the articles of incorporation be filed with the secretary of state. It seems to me, however, to show very clearly that the legislature construed this act as not relieving foreign insurance companies from the requirement imposed by the corporation laws of the state with respect to the filing of such articles. It will be noticed that the fee is specified, not as the same fee as required by statute for filing similar documents or as the same fee required from other companies filing such documents with the secretary of state, but "the same fee as that required by the statutes for filing the same document or documents with the Secretary of State."

Again, while all insurance companies are relieved of the duty of filing annual reports with the secretary of state, that provision presupposes a compliance with the requirement with respect to the filing of the articles of incorporation.

Section 30 of the new act is of the same general purport as Section 30 of the act of 1907, and contemplates that domestic insurance companies shall file their articles of incorporation with the secretary of state.

Counsel for one of the foreign insurance companies doing business in the state, having learned of your submission of this question, has called my attention to certain cases in which it has been held, under somewhat similar statutes, that, by compliance with a special law covering the subject of insurance and requiring filing of articles of incorporation and other documents in a designated office, companies subject to such law were relieved from compliance with the provisions of general incorporation laws, upon the theory that the procedure specified in the special statute was substituted, in the case of corporations subject to its provisions, for that provided by the general incorporation law.

While I realize the authority of the courts enunciating this doctrine, I am not convinced by the reasoning of the decisions in question, and even in the absence of what I regard as clear internal evidence of the purpose of the legislature, I should prefer to stand upon the doctrine of The State vs. Phoenix Insurance Company, 92 Tenn. 420, and Welch Stave & Merc. Co. vs. Stevenson, 92 Ark. 266.

Moreover, it seems to me that to hold that foreign insurance companies were, by the provisions of the insurance act of 1913, relieved from the necessity of complying with the requirements that they file certified copies of their articles of incorporation with the secretary of state would be wholly to disregard the plain provisions of Section 917, Revised Statutes, 1908, that "such (Foreign) corporation shall be subjected to all the liabilities, restrictions and duties which are or may be imposed upon such corporations of like character organized under the general laws of this state. I can find no reason to believe that this particular

provision of the statutes has been repealed by any later enactment.

In Iron Silver Mining Company vs. Cowie, 31 Colo. 450, the Supreme Court of this state held that under the statutory provision last quoted above, a foreign corporation created for a term of fifty years and doing business within this state, must, at the end of twenty years, renew its corporate existence within this state, and upon this point the court says:

> "It is too clear for argument that if a foreign corporation is permitted to continue its legal existence within this state for more than twenty years without complying with our statute relating to such extensions, instead of there being that uniformity in the powers, liabilities, duties and restrictions of the two kinds of corporations which it was the object of this clause to secure, a discrimination would be made in favor of the foreign and against the domestic corporation. The duties of the foreign would be less onerous and its powers greater than those of a domestic corporation and this our General Assembly never intended."

I conclude, therefore, that foreign corporations doing an insurance business in this state must comply with the statutory provisions governing foreign corporations in general, except as they are modified by the provisions of the insurance statute, applicable equally to domestic and foreign corporations, that is, the provision of Section 23, Chapter 99, Laws 1913, that:

> "After filing its articles of incorporation or charter with the Secretary of State, no insurance company shall be required to file its annual report or any other instrument (except amendments to said articles of incorporation or charter) in the office of the Secretary of State or to pay to the Secretary of State an annual corporation tax."

Yours very truly,

FRED FARRAR,
Attorney General.

By FRANK C. WEST,
Assistant.

(January 5, 1914.)

A county clerk cannot charge a fee for performing an additional duty which has been imposed by the general assembly without provision for compensation therefor.

Allen N. Lambright, Esq.,
Attorney at Law,
Las Animas, Colo.

Dear Sir: I have your letter of December 30, 1913, wherein you make inquiry concerning the matter of fees which the County Clerk should receive for registering High School District Bonds.

Section 18, Session Laws 1909, page 405, provides that:

"Whenever any high school district shall issue bonds under the provisions of this act, all such bonds shall, previous to being negotiable, be presented to the recorder of the county, to be duly registered by him in a book kept for that purpose in his office, noting the amount, time of payment and rate of interest, and all such bonds shall state on their face that they are issued under the provisions of this act."

I am of the opinion that the Legislature, by the above section, has imposed upon the county clerk an additional duty, without providing a corresponding compensation therefor. So that the county clerk would not be entitled to charge a fee for the performance of said services.

Very truly yours,

FRED FARRAR,
Attorney General.

By WENDELL STEPHENS,
Assistant.

(February 21, 1914.)

Funds deposited with the State Bank Commissioner by a liquidating bank under section 51 of the new bank act (S. L. 1913, p. 116) are not subject to the so-called Daily Turnover Law (S. L. 1913, p. 580).

Mr. E. E. Drach,
State Bank Commissioner,
Denver, Colorado.

Dear Sir: I have examined the statutes, at your request, for the purpose of determining whether or not, under Chapter 44, Section 51, of the Session Laws of 1913, it is your duty to retain depositors' money in your possession as provided for in said section, or whether or not said section is in any manner affected by Chapter 147, Section 2 of said Laws of 1913.

After examining the two sections, I have come to the conclusion that it is your duty to retain this money until such time as it shall be turned over to the treasury of the county wherein the bank was located.

The two statutes do not seem to be in conflict. This is a special statute providing what shall be done with funds so received by the bank commissioner. Chapter 147 referred to designates the treasurer as the custodian of all moneys belonging to the State of Colorado, or to any institution, bureau or department or public office of the state. These funds do not fall under any of these classifications.

Furthermore, another rule of construction would apply here, namely, that where an act is general and applicable to a number of subjects, and there is another act which is applicable to one of

the subjects, they are not necessarily so inconsistent that both cannot stand. I furthermore find that the banking law did not go into effect until after Chapter 147, which would be another reason why the banking statute should govern in the event that there is a conflict.

I think, therefore, you should retain any such sums so received, and turn them over to your successor in office, taking his receipt therefor.

Yours very truly,

FRED FARRAR,
Attorney General.
By NORTON MONTGOMERY,
Assistant.

(March 21, 1914.)

Certificates of indebtedness issued by the board of capitol managers are really warrants.

Chapter 151, S. L. 1911 (p. 461), requiring re-transfer of loan made by Internal Improvement Permanent Fund to Capitol Building Fund, is valid and is equivalent to an appropriation.

How the re-transfer should be effected.

Honorable M. A. Leddy,
State Treasurer,
Denver, Colorado.

Dear Sir: I have had under consideration your letter of March 5, requesting an opinion (1) as to the validity of Chapter 151 of the Session Laws of 1911 (page 461), which requires the treasurer "to transfer to the Internal Improvement Permanent Fund out of the Capitol Building Fund as the same may become available" the one hundred and fifty thousand dollars ($150,000) transferred from the former fund to the latter fund under the Act of April 6, 1891, found in the Session Laws of 1891, at page 53; (2) as to the meaning of the word "available," appearing in the Act of 1911, in view of the fact that warrants or "certificates of indebtedness" drawn against the anticipated revenue of the Capitol Building Fund are outstanding; (3) as to the relative standing of the 1911 act and the appropriations from the Capitol Building Fund, found in Session Laws of 1913 at pages 32, 33, 35 and 39; (4) whether the instruments commonly referred to as "capitol building warrants" are really warrants or certificates of indebtedness.

The last or fourth question will, for convenience' sake, be first considered.

Section 6239 of the Revised Statutes of Colorado, 1908, is an amendment of 1885 and reads as follows:

> "In all cases where the laws recognize a claim for money against the state, and no appropriations shall have been made

by law to pay the same, the auditor shall audit and adjust the same, and when the claim shall have been approved by the governor and attorney general, he shall give the claimant a certificate of the amount thereof, under his official seal if demanded, and shall report the same to the general assembly, with as little delay as possible, giving a statement in tabular form of the number, date of issue, and amount of each certificate, and for what purpose issued. No indebtedness shall be incurred, or certificate of indebtedness issued, for any purpose for which an appropriation has been made and exhausted, unless the necessity for the creating of such indebtedness, and the issuing of such certificate, is caused by a casualty happening after the making of the appropriation; and in all such cases the question of incurring such indebtedness shall be first submitted to the governor and attorney general for their approval."

The section superseded by the 1885 amendment was as follows:

"In all cases where the laws recognize a claim for money against the state, and no appropriation shall have been made by law to pay the same, the auditor shall audit and adjust the same and give the claimant a certificate of the amount thereof, under his official seal if demanded, and shall report the same to the general assembly with as little delay as possible."

General Laws 1877, Section 1131.

The above quoted provisions were the only ones defining certificates of indebtedness as the term was used and understood in this State prior to the year 1893.

The essential attribute of a certificate of indebtedness as defined in the original section is, obviously, that it covers a claim for which no appropriation has been made at all; under the amendment, either there has been no appropriation, or, an appropriation having been made and exhausted, a casualty has happened, making it necessary to incur the indebtedness.

Since the 1885 amendment such a certificate of indebtedness could be issued only with the approval of the governor and the attorney general. In any event, the fundamental fact is that there was no appropriation, or, at least, no unexhausted appropriation. A certificate of indebtedness required further legislative action for the payment thereof.

This brings us naturally to the subject of warrants. A warrant of the State of Colorado is an instrument issued by the Auditor of State authorizing the State Treasurer to pay to the person named therein, or to his order, a specified sum of money out of a certain fund (R. S. 1908, §6223).

A prior appropriation is a prerequisite to the issuance of every warrant (R. S. 1908, §§6236, 6237).

A warrant may of course be legally issued in anticipation of the assured revenues, provided, only, an appropriation has first been made. It frequently happens that the appropriation antedates by a considerable period the time when the incoming revenues actually provide the necessary funds. This very fact is recognized by our system of presentation, registry and calling of warrants (§§6194, 6195, 6197, 6186, 6188), and particularly by the provision under which proceeds from the sale of state lands may be invested, not only in state bonds, which are payable at a future date, but in state warrants as well. The endorsement on warrants presented but not paid is "No funds" (R. S. 1908, §6197); that on certificates of indebtedness is "No appropriation" (R. S. 1908, §6198).

Bearing in mind, then, the vital distinction between a warrant and a certificate of indebtedness, we come now to consider the effect of the so-called certificates of indebtedness authorized by the various acts making appropriations out of the Capitol Building Fund.

Beginning in 1893 (Session Laws 1893, pp. 72, 73; §§2, 3), the general assembly has used the term "certificates of indebtedness" in connection with the Capitol Building Fund. This is true of the appropriation acts passed by the Nineteenth General Assembly (Session Laws 1913, pp. 32, 33, 35, 39). Prior to 1893, there was no act which used the term in that connection.

In every such instance since then (except the short bill in Session Laws 1913, p. 32), the statute expressly provides that the certificates shall in no event be in excess of the appropriation made in the particular act.

In other words, as to the only point of difference between a warrant and a certificate of indebtedness, as defined in R. S. 1908, §6239, the legislature has classed the so-called certificates of indebtedness of the Board of Capitol Managers with state warrants and not with certificates of indebtedness, properly so termed.

The prior appropriation is indispensable to the validity of such so-called certificates of indebtedness of the Capitol Managers.

This substantial identity is emphasized by the uniform practice of the state officers in dealing with the capitol building appropriations. The instrument issued has invariably been, I am told, in the form of a warrant. Such a practice, which has become fixed among the executive officials, is deemed contemporaneous construction of the statute and hence entitled to great weight.

It is fair to sum up by saying that the instruments designated in the appropriation acts as certificates of indebtedness are, to all intents and purposes, state warrants. There is no objection to giving these certificates the statutory warrant form.

I am the more ready to voice the foregoing opinion because it is consistent with the general provision for disbursements from the Capitol Building Fund, Revised Statutes 1908, Section 462 (See Session Laws 1889, page 365, section 10, and Session Laws 1885, page 58, section 10), which has been the law as long as there has been a board of capitol managers. That section reads as follows:

> "That all disbursements of the fund known as the 'Capitol Building Fund' for the construction of the capitol building, shall be made by said board of managers in regular sessions, for all labor performed, work done or material furnished, by a close examination of the bills presented for services rendered, and, if found correct, they shall audit the same and issue a voucher certifying that the services have been rendered and the owner thereof entitled to a warrant on the treasury for the amount therein named. Upon the presentation of said voucher to the auditor of state, he shall draw his warrant on the state treasury for the amount stated, and to the order of the person named in said voucher; *Provided, always,* That no voucher shall be issued to exceed the amount appropriated for each year. All vouchers issued shall be recorded in a book kept for that purpose."

The above discussion has been made at length because upon the conclusion reached thereby will depend, very largely, the answers to your remaining questions.

To take up now your first question, namely, as to the validity of the act directing the re-transfer from the Capitol Building Fund to the Internal Improvement Permanent Fund of the $150,000 loan effected in 1891 (Session Laws 1911, page 461), I am of the opinion that the act of 1911 is valid in every respect; that it became effective August 5, 1911, and that it is equivalent to an appropriation of a sum equal to the principal sum of the loan and the interest thereon at 3½ per cent per annum, payable out of the Capitol Building Fund. Whether we regard it as an appropriation or otherwise, there appears to me no reason why the attempt of the legislature to return these borrowed moneys, which are in the nature of trust funds, to the place where they belong should be frustrated.

The query naturally arises whether the transfer ought to be made by warrant or by mere bookkeeping entries. Aside from certain practical considerations this seems wholly immaterial, since the moneys are not paid out of the treasury, but simply restored to the proper fund within it.

Now, what is meant by the phrase "as the same may become available"? and what is the relative standing of the 1911 transfer act and the 1913 appropriation acts in question? A strict construction might require the view that it became the duty of the State Treasurer to pay over into the Internal Improvement Perma-

nent Fund from and after August 5, 1911, whatever revenue came into the Capitol Building Fund, save only the sums necessary to pay then existing appropriations. This has not been done. I am informed that appropriations for 1911 and 1912 and a considerable part of the appropriations for 1913 and 1914 have been paid while no part of the directed re-transfer has yet been accomplished. I understand that there are also outstanding warrants amounting to $60,000.

I have attempted to show that the warrants (or "certificates of indebtedness") of the Capitol Building Fund are state warrants in the true sense. Assuming this to be correct, the public funds in the hands of the treasurer for investment may properly be invested in them, in strict conformity with Section 5198 of the Revised Statutes of 1908, which, in respect to investing in interest-bearing warrants of the state, has remained unchanged since the year 1887.

Under the circumstances, I advise that the treasurer proceed to invest in the outstanding warrants above referred to and also in the warrants which will hereafter be issued for support and maintenance under the appropriations made in 1913. I advise further that warrants be issued from time to time covering revenues collected and reasonably anticipating those to be collected, for the re-payment of the Internal Improvement Loan.

By keeping the Capitol Building Fund warrants invested the finances of the Board of Capitol Managers will remain on a cash basis and the loan itself will be gradually repaid. The Capitol Building Fund is a permanent one, annually replenished by a continuing fractional mill levy established by the state legislature. By the act of 1891, the legislature pledged the faith of the state for the repayment of the loan received, and it is hardly conceivable that this legislature will repeal existing statutes before the faith so pledged has been redeemed.

In conclusion, I may say that in my judgment, you, as State Treasurer, will be justified in adopting the procedure outlined above whereby, in conjunction with the Auditor of State, you will be able to anticipate not only the revenues arising from the taxes of 1913, but also those arising from the taxes of 1914 which will not be payable until the year 1915. And while the Transfer Act of 1911 is not limited to the revenues of any particular year, you will, of course, be justified in making only a reasonable anticipation of the incoming revenues, as in other cases.

There will be no session of the state legislature to change the law before the tax levy of 1914 is an accomplished fact. Under the present law the fractional mill levy of the Capitol Building Fund is continuing and automatic. It is to continue "until the completion and furnishment of the state capitol building" (R. S. 1908, §471). The completion and furnishing of the capitol building is to be evidenced by a proclamation of the board of capitol managers announcing the acceptance of the building "by and

through said board on behalf of the state" (R. S. 1908, §452). If the 20th general assembly does not change the existing law, and no amendment or repeal is effected by an initiated measure at the next election, the entire loan will be repaid long before the end of the next biennial period.

By Chapter 93 of the Session Laws of 1913 (page 301), the moneys paid back to the Internal Improvement Permanent Fund would immediately become a part of the State Road Fund, and so the important work of the State Highway Commission could go on without the financial difficulties which would otherwise threaten.

Should you desire the assistance of this office in working out the details of the plan you adopt in this connection, I shall be glad to afford you any aid within my power.

Very truly,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(April 4, 1914.)

A militiaman on active duty in a county not the county of his actual residence does not gain a residence thereby for voting purposes.

Mr. Robert S. Mitchell,
Democratic County Chairman,
Walsenburg, Colorado.

Dear Sir: I have the letter of March 31st signed by yourself and Mr. Hudson, chairman of the Democratic Town Committee, in which you ask several questions relative to the election to be held in Walsenburg on April 7th.

Taking up these questions in their order:

First. Can militiamen who are not residents of this town lawfully vote at this spring election, although they have actually been in the service in this county over ninety days? In answer to this, I beg to say that they can not unless they are, regardless of their service as militiamen, actual residents of the town of Walsenburg. This question is specifically covered by our statutes. See Section 2149 on page 613 of the Revised Statutes of Colorado for the year 1908, which provides:

> "For the purpose of voting and eligibility to office.—No person shall be deemed to have gained a residence by reason of his presence, or lost it by reason of his absence, while in the civil or military service of the State or of the United States, nor while a student of any institution of learning, nor while kept at public expense in any poor house or other asylum, nor while confined in any public prison."

Second. Can militiamen vote here who have not been residents here in this county ninety days since their discharge from the service assuming that they were not residents of Walsenburg prior to the date of their discharge? Pursuant to the answer to the last question, this one also should be answered no. In other words, they must be actual, bona fide residents of the town of Walsenburg and have lived in the County of Huerfano as actual bona fide residents, aside from any military service whatsoever, for a period of ninety days before the election.

Third. Can militiamen who are on active duty here, having come here from another county and now declare they are going to live here, lawfully vote at this spring election? Not unless they have lived in the county for a period of ninety days, regardless of their presence in the county because of their military service. In other words, in aswer to all of these questions, it is sufficient to say that their presence in the county in military service does not establish for them a residence there.

Let me also direct your attention to Section 2250 on page 654 of the Revised Statutes for 1908, which defines, generally, the rules governing the determination of residence. These two sections should be taken together, and you will readily understand them if you will but read them over. You will, of course, understand that any bona fide resident of Walsenburg is not deprived of the privilege of voting because he is in the militia.

I wish to add that I have advised the Governor of your fears relative to the attempt to have members of the militia vote, and he has given strict orders against any such attempt. As to those men who are discharged from the militia, the Governor, of course, has no control over them in the military sense, and they must be governed by the ordinary rules. I wish to say, further, that I am only too glad to have been of service to you, and if anything else arises, kindly do not hesitate to call me up and ask my advice if you so desire.

Let me also direct your attention to the fact that the ninety days qualification provides for residence in the county. The statute relative to the length of residence required is Section 2146 of the same volume, that is, a person in order to vote, must have resided in the state one year immediately preceding the election, in the county ninety days, in the city or town thirty days, and in the ward or precinct ten days.

I remain, yours very truly,

FRED FARRAR,
Attorney General.

(April 8, 1914.)

The Teachers' Minimum Salary Act (S. L. 1913, p. 603) must be read in connection with the Levy Limiting Law (S. L. 1913, p. 560), so that the maximum levies expressly required as a condition to the extending of state aid will be deemed reduced accordingly.

Mrs. Mary C. C. Bradford,
State Superintendent of Public Instruction,
Denver, Colorado.

My dear Mrs. Bradford: I am in receipt of your inquiry of this date as to the interpretation to be placed upon the Teachers' Minimum Salary Act (Session Laws 1913, page 603). This act prescribes a minimum salary for teachers.

Under Section 1 thereof, this minimum salary is to be paid by segregating such part ("not to exceed ten mills") of the special tax levy of the district as is sufficient with all other apportionments from the state and county to pay each teacher in the district fifty dollars a month for a term of at least six months, except in the case of schools in altitudes of 8,000 feet or more, where, with the consent of the county superintendent, the limit may be lowered to four months.

Section 2 provides for special or additional aid from the county school levy to those districts whose salary levy together with the ordinary apportionment from state and county school funds, is inadequate for the payment of the minimum salary.

Section 3 empowers the State Superintendent of Public Instruction to assist with the Public School Income Fund of the State any district which, after making its special salary levy and receiving its other apportionments from county and state, still lacks the necessary amount to comply with the Minimum Salary Law.

You desire to know whether the limitations mentioned in the Minimum Salary Law are to be taken literally or whether they are to be read in connection with that part of the Levy Limiting Law (Session Laws of 1913, page 560) which says:

> "* * * all statutory rates making provision for the revenues * * * for * * * schools * * * are hereby so reduced as to prohibit the levying of a greater amount of revenue on the assessed valuation of the year 1913 than was levied for the year 1912, plus fifteen per cent."

The Minimum Salary Law, which was House Bill 262, was passed by the legislature before the Levy Limiting Law, which was House Bill 348. The former was approved by the Governor on April 12, 1913; the latter, on May 1, 1913. The latter, by reason of containing both the emergency clause and the safety clause, went into effect immediately, while the former became effective on July 15, 1913. In view of the history of these two

bills, I think the levy limitations in the Minimum Salary Law must be considered as affected by the Levy Limiting Law.

In other words, the expression "not to exceed ten mills" in Section 1 of the Minimum Salary Law, must be held to mean such a levy as would produce, on the basis of the new valuation of 1913, a revenue equal to what a ten-mill levy would have yielded on the 1912 valuation, plus not more than fifteen per cent. Similarly, the words "maximum levy for school purposes allowed by law," as used in Section 3, must be regarded as a modification of the previously existing maximum, and the five mills would have to be reduced accordingly.

It seems to me that any other interpretation than the above would violate the plain purpose of the legislature and would render the provisions of the Minimum Salary Act not only difficult, but impossible, of execution.

The duty of all state officers is to give effect to an act of the general assembly whenever it is possible to do so.

Trusting that I have made myself sufficiently clear, I am,

Very truly,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(April 16, 1914.)

The board of regents of the university, under the powers conferred by Section 12, Article IX, Colorado Constitution, retains exclusive control and direction of the revenue arising from the university's fractional mill levy, notwithstanding the Turnover Law (S. L. 1913, p. 580), and may withdraw that revenue from the state treasurer's custody in such amounts and at such times as it deems necessary.

To

Doctor Livingston Farrand,
President, Board of Regents,
University of Colorado,

Honorable M. A. Leddy,
State Treasurer, and

Honorable Roady Kenehan,
Auditor of State.

Gentlemen: I am in receipt of your joint letter, requesting an opinion "as to whether sections 1 and 5 of the Act found at page 580 of the Session Laws 1913, are applicable to the mill levy made for the University of Colorado, also as to whether such sections are applicable to the Special Appropriation found at page 108 of the same Session Laws."

Section 12 of Article IX of the State Constitution establishes the body corporate known as "The Regents of the University of Colorado," and Section 14 of the same article declares:

> "The Board of Regents shall have the general supervision of the University, and the exclusive control and direction of all funds of, and appropriations to, the University."

It is clearly apparent from these provisions that the people intended by the fundamental law to place the financial, as well as the educational, administration of the State University in an independent body, unhampered by embarrassing restrictions and free from interference by other officers or departments of the government. The regents are elective officers. They are held accountable for their official acts as other elective state officers are accountable, and in the last analysis they are responsible to the people alone.

The general assembly clearly recognized this attitude of the Constitutional Convention, and legislated accordingly.

Chapter 152 of the Revised Statutes of 1908 furnishes a carefully devised fiscal system for the University by which the Board of Regents and its officers are given independent control of the University finances, except as to the collection and preliminary custody of the funds by the State Treasurer.

Does the so-called Turnover Act (Session Laws 1913, page 580) effect a change in the rights and liabilities of the Board of Regents, or in its fiscal system as previously established? My answer, in so far as the funds arising from the fractional mill levy are concerned, is in the negative.

Section 5 of the Turnover Act provides:

> "Nothing in this act shall be construed to deprive the regents of the University of Colorado of the exclusive control and direction of all funds and appropriations to the University, and this act is intended only to provide for the safe custody and proper preservation of the said funds. The unconstitutionality of any provision or provisions of this act as applied to any fund or funds, or to any officer, department or institution, shall be construed to render inoperative only the provisions as applied to such funds, officers, department or institution, and the unconstitutionality of any single provision or provisions herein shall not render the other provisions inoperative, the various requirements being declared separable."

The last part of this section is significant. It apparently suggests a legislative doubt,—in direct connection with the University funds,—as to the power of the general assembly to make its law applicable to those funds.

.In so far as the State legislature has attempted to safeguard the funds belonging to the State University, its action seems legal and commendable. When the university funds are actually idle they are to be kept in the custody of the State Treasurer.

On the other hand, the Board of Regents, acting as a constitutional body, may withdraw these funds in such amounts and at such times from the custody of the State Treasurer as in its discretion may seem to it necessary, by warrants of the Auditor of State issued in favor of the Treasurer of the University upon the order of the President of the Board of Regents, countersigned by its Secretary (R. S. 1908, §§6947, 6948, 6950, 6953).

I find nothing in the 1913 act which requires a change in the fiscal method prescribed in the Revised Statutes.

What is said above applies to the revenues from the fractional mill levy.

Whether the conditions prescribed in sections 3 and 4 of the specific appropriation, found in the Session Laws of 1913, at page 108, are valid,—in other words, whether the opinion above expressed is to be applied to the special appropriations, as well as to the other funds of the University,—is a question which I wish to consider further before rendering my opinion thereon. I therefore reserve that question to be passed upon in a later communication.

In conclusion, I would say that the State officers may of course make reasonable anticipation of incoming University revenues, just as they anticipate the State revenues for other purposes.

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(June 20, 1914.)

School levy voted by electors cannot be changed. Electors in third-class districts determine number of school houses.

Mr. R. J. Hasstedt,
Arlington, Colorado.

Dear Sir: I am in receipt of your letter of the 17th, in which you inquire as to whether or not there is any authority in county or state to cut down a levy of a school district voted upon by the electors at a legally called meeting, three-fourths of the voters voting for said levy, and beg to advise that there is not.

It is provided by section 12 of the Limiting Levy of Taxes Act, found on page 560, 561, Session Laws 1913, that:

"If three-fourths of the votes cast at any such election shall be in favor of the increased levy as named in said election notice, then the officers charged with levying taxes, may make such increased levy for the year voted upon and thereafter the limitation of this act shall apply unless an increased levy for the particular year shall be voted at another election in like manner."

In regard to your question as to the maximum levy that a district may vote for school purposes, I desire to say that if by that you mean the levy that you can make by having a three-fourths vote of the electors, there would be no maximum levy. By a three-fourths vote, you could make as high a levy as you desired. Of course, it is provided that for each year after 1913 the tax rate shall be so limited as not to levy a greater amount of revenue than was levied the preceding year plus five per cent. This would be your maximum levy if no vote was taken to increase the same.

In third class districts the electors have the power to determine the number of school houses in the district. If the electors vote to have one school house or to have two school houses, the county superintendent has no authority to change the same.

There is nothing in the school law stating as to the least number of school age children demanding that a school be placed near their homes. As to whether or not there is need of school houses in different portions of the district, lies with the electors in third class districts.

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

(June 26, 1914.)

The Insurance Commissioner should adopt such rules as may be reasonably necessary to permit fraternal benefit societies to issue certificates providing for extended and paid up insurance and withdrawal equities.

Hon. Saul Epsteen,
Insurance Commissioner,
Denver, Colorado.

Dear Sir: I have your inquiry of the 18th ult. wherein you state that The Fraternal Union, a Colorado corporation doing a life insurance business, has filed with you a petition, a copy of which you enclose, in which permission is asked to issue a certificate providing for extended and paid up insurance and withdrawal equities, and wherein you set forth arguments presented

by the petitioner in support of its contentions and request an opinion as to the correctness of the petitioner's contentions.

For convenience, I herewith quote the arguments of the petitioner and my answers thereto:

1. "According to the terms of the Articles of Incorporation (or Charter) of the Society and its Constitution it is proper to issue such a certificate."

Even though the articles of incorporation of the society and its constitution authorize it to issue such a certificate, it could not do so unless it had first complied with Section 5, sub-section 2 of the Mobile Bill.

2. "The Society argues that Sec. 5, sub-section 2 of the Mobile Bill should be construed in the light of section 23a, and that the two taken in conjunction render it legal for the Society to issue the certificate."

Construing Section 5, sub-section 2 in the light of Section 23a in no way changes the clear intent and meaning of Section 5, sub-section 2.

3. "The society alleges that the right to issue the proposed benefit certificate will prove a lasting benefit to the members and a substantial asset and benefit to the Society itself."

The fact that a certain plan might be beneficial would not justify the Commissioner in approving same if such plan is illegal. If the law works a hardship on the company, the remedy is with the legislature.

4. "The Society states that the intent of the law was to permit the issuance of this certificate and cites a resolution of the National Fraternal Congress to support this contention."

The resolution cited and relied upon by the petitioner, shows that the intention of the National Fraternal Congress was not as contended for by the petitioner. It authorizes the society to grant extended and paid up protection or withdrawal equities. But how are they to be granted? According to the resolution, they are to be granted only in the following manner: " * * * in conformity with said sub-section two of section five". However, it is the intention of the legislature that governs and not that of the National Fraternal Congress.

Our conclusion on the point is that Section 23a of this act, the same being Chapter 139, Session Laws 1911, is designed to require a certain standard of soundness for a society, such as is contemplated by the act, as a whole; that if, in the year 1917, it does not reach that standard, then amelioration measures must be commenced.

The act undoubtedly contemplates the existence of societies which write or issue certificates granting extended and paid up protection or such withdrawal equities as its constitution and laws may provide. Unfortunately the act does not provide the definite machinery under which such an organization may be ini-

tiated, and it is therefore a matter of construction, for undoubtedly they are authorized to exist.

It is our conclusion that Section 23a has no immediate bearing on the question submitted and the sole question is whether or not this organization, under this new class of insurance or protection which it proposes to write, will conform to sub-section 2 of Section 5, and inasmuch as the machinery for organization is not provided for, certain discretion is vested in you to grant them any proper and reasonably safe means of organizing along this line for the purpose of writing this class of business.

I understand that this class of business will be, in all particulars pertaining to the finances, separate and distinct from the general business of the society. It is my judgment, therefore, that you should adopt such rules as may be reasonably necessary to permit this organization to organize this class and at the same time, safeguard every policy-holder who may enter this particular class of the society's business. This seems to be more a question of fact than a question of law.

Very truly yours,

FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant.

(July 20, 1914.)

Qualifications of members of the State Board of Nurse Examiners.

Miss Louise Perrin,
Sec. State Board of Nurse Examiners,
Denver, Colo.

Dear Madam: I am in receipt of your letter of recent date in regard to whether or not a nurse is eligible for an appointment on the State Board of Nurse Examiners if she has graduated from a school giving only a two years course in a school now out of existence. I desire to state that Section 1 of the act relating to professional nursing provides:

> "That within sixty days after the taking effect of this act, the Governor of the State shall appoint a State Board of Nurse Examiners, to be composed of five members. Each of the members of said board so appointed by the Governor shall be a trained nurse of at least twenty-three (23) years of age, of good moral character, who is a graduate from a training school, connected with a general hospital or sanitarium of good standing, where a three years' training with a systematic course of instruction is given in the wards; one of the members of said board shall be designated by the Governor to hold office for one year, one for two years, one for

three years, one for four years, and one for five years, and thereafter upon the expiration of the term of office of the person so appointed, the Governor shall appoint a successor to each person to hold office for five years, each of whom shall be a registered nurse under the provisions of this act, and shall fulfill the requirements in this section set forth."

The first part of this section relates to the board that shall be appointed by the Governor after the act goes into effect, while the latter part provides for the appointment, upon the expiration of the ones appointed formerly. You will notice that it is provided that upon the expiration of the term of office of the persons appointed formerly, successors shall be appointed to hold office for a term of five years, each of whom shall be a registered nurse under the provisions of this act and shall fulfill the requirements in this section set forth. In order to fulfill the requirements in this section set forth, a nurse must be at least twenty-three years of age, of good moral character, who is a graduate from a training school connected with a general hospital or sanitarium of good standing where a three years' training with a systematic course of instruction is given in the wards. It is immaterial, of course, as to whether or not the school is now out of existence. My conclusion, therefore, is that a nurse is not eligible who is graduated from a school giving only a two years' course.

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

(August 5, 1914.)

A certificate of indebtedness issued under Section 6239, R. S. 1908, bears interest from the date of its endorsement by the state treasurer.

Honorable M. A. Leddy,
State Treasurer,
and
Honorable Roady Kenehan,
Auditor of State.

Gentlemen: In answer to your inquiry as to the date from which certificates of indebtedness issued pursuant to the provisions contained in Section 6239, Revised Statutes of Colorado, 1908, bear interest, I beg to advise that the law seems clear that these certificates follow the same rule as is provided for interest on State warrants. That is to say, they do not bear interest until they are presented to the Treasurer for his endorsement.

It is needless to say that it cannot be contended that there is a moral obligation on the part of the State to pay interest from the date these certificates issue, and I wish it were possible for me to give an opinion that the date of issuance governs. However, inasmuch as the executive officers are not permitted to make the law, we are compelled to act under it as we find it.

Reviewing briefly the various provisions: Section 6226 provides that certificates of indebtedness shall be registered by the treasurer in the same manner as State warrants are registered.

Section 6197 provides for the presentation of the warrant to the treasurer, not for registration, because that is presumed to have been done, but for payment. If there be no funds then he endorses the warrant to that effect and the warrant bears interest at the rate of four per cent. from that date.

The next section, 6198, as amended, outlines the same procedure for certificates of indebtedness, except that it provides that the treasurer shall endorse said certificate: "No appropriation" and the further statement: "This certificate of indebtedness bears interest at the rate of four per cent. per annum." The section then provides: "The treasurer shall sign said endorsement and redeliver said certificate to the bearer thereof."

It will be noticed that pursuant to the sections above referred to, both the certificate and the warrant go to the treasurer for two purposes,—first, for registration, and second, for endorsement or payment, in the event there are funds to pay the warrant. The provision relative to the certificates of indebtedness does not fix the date at which it begins to bear interest, but that is governed by Section 6225 which provides:

> "Said certificates of indebtedness shall bear interest at the rate of four per cent. per annum from the date of their presentation to the state treasurer for endorsement."

It is therefore my conclusion that the date of the endorsement of the certificate by the treasurer fixes the time from which the interest shall commence to run.

I remain,

Yours very truly,

FRED FARRAR,
Attorney General.

(August 6, 1914.)

After a bank has once voluntarily liquidated it can procure a certificate of authority to transact a banking business only by reorganizing as a new bank, according to the requirements of section 5, S. L. 1913, p. 117.

Mr. E. E. Drach,
State Bank Commissioner,
Denver, Colorado.

Dear Sir: In reply to the letter of William A. Bryans of August 3, 1914, which you referred to this office and wherein Mr. Bryans submits the question as to whether the Aurora State Bank, after having once voluntarily liquidated, can now be authorized to resume business at the same place, the same building and under its now authorized capital, I am of the opinion that after a bank has once liquidated, it can only procure a certificate of authority from you to transact a banking business by reorganizing as a new bank according to the requirements of Section 5, 1913 Session Laws, page 117.

The fact that the corporation known as the Aurora State Bank has not been dissolved in the office of the Secretary of State does not change the clear intent of the legislature as contained in Sections 51, 71 and 84 of Chapter 44 of the Session laws of 1913.

Section 51 provides for the manner in which a bank may voluntarily liquidate, and provides that if the State Bank Commissioner is satisfied with the truth of the statements therein required to be filed with him "he shall issue a certificate cancelling the authority of said bank to do business, and it shall be no longer subject to the provisions of this act."

Section 71 provides that when the State Bank Commissioner takes possession of a bank for any reason and afterwards determines that said bank is only temporarily embarrassed and that the assets of the bank are sufficient to pay its liabilities other than its capital, surplus and undivided profits, and that it would be safe for such bank to resume business, he may permit it to do so after its capital has been replenished and shall issue a new certificate of authority for said bank to transact a banking business. Said section also provides that he may "at any time after taking possession *and before final liquidation,* permit the stockholders to voluntarily place the bank in a sound financial condition and allow the bank to resume business if, in his opinion, it can do so with safety and to the satisfaction of its creditors." The very fact that the legislature gave the Bank Commisioner this power and required him to exercise the same before final liquidation, shows clearly the intention of the legislature to be that the Commissioner cannot authorize a bank to resume after liquidation.

Section 84 provides for the liquidation of banks, and provides that after the State Bank Commissioner shall have delivered to

the stockholders or owners all the property and effects of said bank remaining in his possession, he shall be discharged from all liability to said bank or its creditors, and it further provides "and thereupon the bank shall be in the same position as though it had never been authorized to transact a banking business."

Since this bank is now in the same position as it would have been had it never been organized and never authorized to transact a banking business, you should require it to organize as a new bank.

Very truly yours,

FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant.

(August 18, 1914.)

The ballot boxes used at the last general election may be used for the primary election, and if no election contest is pending the judges may destroy the ballots.

The ballot boxes cannot be left in the precincts during the time intervening between the primary election and the general election, but must be returned to the county clerks immediately after the primary election.

Mrs. L. O. Haughey,
County Clerk and Recorder,
Craig, Colorado.

Dear Madam: I have your letter of August 13th, wherein you submit the following questions and request an opinion thereon:

First,—Can the ballot boxes containing the last general election ballots be used for the primary election, and if so, will it be lawful for the judges of election to burn the old ballots contained in them at this time?

Second,—Would it be lawful for the judges in the different precincts to keep the ballot boxes in their possession until the general election?

Your first question is answered by the postscript contained in an opinion rendered June 10, 1912, by our predecessor in office, General Griffith, a copy of which I enclose herewith.

You can see from that opinion that if no election contest is pending in your county, it would be perfectly proper for the judges to destroy the ballots. If litigation is still pending concerning any election contest, then the ballots should be preserved by you instead of being destroyed.

In reply to your second question, I am of the opinion that the ballot boxes cannot be left in the precincts during the time intervening from the date of the primary election until the date of the

general election, but that they must be returned to the county clerk immediately after the primary election.

Section 20 of the primary law, Session Laws 1910, page 15, provides as follows:

> "In making out and certifying the returns at the direct primary election in the several election precincts, the same shall be done and all acts pertaining thereto conducted in accordance with the provisions of the general election laws for the returns of general elections, except as herein otherwise provided."

Section 2232, Revised Statutes 1908, provides:

> " * * * The said ballot boxes shall be, by the clerk and recorder of the respective counties, delivered to the judges of election within three days immediately preceding any general or special election, to be by him used and returned as hereinafter provided."

Section 2267, Revised Statutes 1908, provides:

> " * * * This box shall then be delivered by one of the clerks of the election who is of the opposite political party from the judge or clerk chosen to take charge of and deliver the certificate and tally list, which clerk shall at once and with all convenient speed, take said box to the office of the county clerk and recorder and safely deliver it to such officer, taking his delivery receipt therefor."

There is nothing in the primary law itself that indicates an intention to conduct the primary election in this respect in any manner other than that in which general elections are conducted.

Yours very truly,

FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant.

(August 26, 1914.)

Since the law (S. L. 1913, p. 266) requires the registration board to sit on the day before the primary election, the board must then sit, even if the day is a legal holiday.

Mr. L. A. Hafer,
County Clerk and Recorder,
Georgetown, Colorado.

Dear Sir: Pursuant to the request of your County Attorney and also yourself over the telephone, I am writing you with refer-

ence to the construction to be placed upon Section 39, Chapter 127 of the Laws of 1911 with reference to the registration board sitting on the day before the primary election, which happens to fall on a holiday. Our attention has been directed to subdivision f of Section 2 of the same chapter which states that "if the time for any act to be done as provided herein shall fall on Sunday or a legal holiday, such act shall be done on the day following such Sunday or legal holiday". Inasmuch as the day following the last day of registration would be election day, it would be impossible to follow out the direct provision of this statute, providing it be claimed that this statute applies, and for that reason it is our opinion that this section, that is, subdivision f of Section 2, does not apply and that the registration board should sit on Monday before election, notwithstanding the fact that the same is a legal holiday.

Yours very truly,

FRED FARRAR,
Attorney General.
By NORTON MONTGOMERY,
Assistant.

(August 26, 1914.)

Procedure in canvassing county vote when only one justice of the peace is in the county.

William G. Messinger,
County Clerk and Recorder,
Creede, Colorado.

Dear Sir: I am in receipt of your letter of recent date in which you inquire as to the procedure in canvassing the county vote when there is only one justice of the peace in the county.

In reply will state that it is provided by Section 2272 of the Revised Statutes, 1908, that on the tenth day after the close of the election, or sooner if all returns be received, the clerk of the county, "taking to his assistance two justices of the peace of his county, one of whom at least, shall belong to a different political party than himself, if any such there be in the county, shall proceed," etc.

Inasmuch as there is only one justice of the peace in the county, I believe the proper procedure would be to have the county commissioners appoint another justice of the peace, if only for the purpose of helping to canvass the vote.

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

(September 5, 1914.)

The 1912 Headless Ballot Law (S. L. 1913, p. 685), Section 3 of which denies assistance to all voters except those suffering from absolute and total physical disability, is by Section 4 declared not to apply to primary elections; hence illiterate primary voters can be assisted as heretofore.

As to whether vehicles for transporting voters to or from the polls are prohibited at general or primary elections.

Mr. W. J. Frederick,
County Clerk of Bent County,
Las Animas, Colo.

Dear Sir: In your letter of August 28 you propound two questions.

Relative to the right of a voter to obtain assistance in voting at the primary election when he is not absolutely and totally disabled physically, but does not understand the English language or does not read or write, I am of the opinion that the provisions of the Headless Ballot Law of 1912, Section 3 (appearing on page 686 of the Session Laws of 1913), apply only to the general elections, regular or special. Hence, I think, a voter at the primary election is entitled to assistance just as he was before the enactment of the law referred to, and need not present a case of "absolute and total physical disability." You will notice that Section 4 of the Headless Ballot Law provides that the act shall not be construed to refer to the method or methods of voting at primary elections.

As regards the use of automobiles or rigs on the days of election for the purpose of transporting electors to and from voting places in country or town precincts, I know of no prohibition in the statutes in so far as the general election is concerned, though it is quite possible that the charters or ordinances of some of our charter cities may forbid it. The statutes and constitutional provisions relating to primary elections do not expressly prohibit such use of vehicles, but the Primary Law of 1910 (Session Laws 1910, pp. 15-34) forbids in Section 28 thereof the payment of money for any purpose except for personal expenses in order to aid, promote or secure a nomination for oneself or for another. The expression "personal expenses" is not defined in the statute. My predecessor in 1912 expressed the opinion that it means something like the definition contained in the Idaho primary law: "only expenses directly incurred and paid by a candidate for traveling and for purposes properly incidental to traveling, and for writing, printing and transmission of any letter, circular or other publication not issued at regular intervals, whereby he states his position or views upon public or other questions, for stationery, postage, and for necessary expenses in hiring halls or other room for the purpose of holding public meetings to address the voters and others upon public questions and matters relating to his candidacy." Whether this definition is compre-

hensive enough to suit our statute, or whether our statute may include the use of vehicles for the voters, I am not prepared to say.

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(September 15, 1914.)

Procedure of State Auditor under Teachers' Minimum Salary Act.

Mrs. Mary C. C. Bradford,
State Superintendent of Public Instruction,
Capitol Building, Denver, Colorado.

Dear Madam: I am in receipt of your inquiry in regard to the procedure to be followed by the various state officials in making payments under the teachers' minimum salary act, found in Session Laws 1913, page 603, and in reply, will state that as soon as you have apportioned, under this act, the sum apportioned to a particular county becomes a claim against the state. The state auditor is therefor justified in acting under Section 6204 of the Revised Statutes of 1908, and issuing warrants to the respective county treasurers according to your apportionment and these warrants will then take the usual course.

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant Attorney General.

(September 22, 1914.)

Where, for the purpose of determining whether the county has a complaint to make as to the valuation of a railroad corporation's property, the representatives of a county seek to inspect schedules filed by the corporation in pursuance of law with the Colorado Tax Commission, it is the Commission's duty to permit the inspection.

Charles F. Tew, Esq.,
Attorney at Law,
Greeley, Colorado.

Dear Sir: In reply to your letter of September 17, inquiring as to the right of the representatives of Weld county to examine the schedules of the railroad companies that have property in your county, I will say:

The office of The Colorado Tax Commission is a public office. It is required by the law to be in continuous session. It shall keep a record of all its doings, which shall be open to the public.

The rule at common law with reference to the inspection of public records or public documents was that no person was entitled to inspect such records and documents, unless he has such an interest therein as will enable him to maintain or defend an action, for which the records sought can be furnished as evidence or necessary information.

The schedules filed by corporations with the Tax Commission are as much a part of the records of the office as are the minutes of the Tax Commission. It is laid down by Cyc. that a taxpayer is entitled to an inspection of public records whenever the statute so provides, or whenever it declares that such records shall be open to the inspection of any person.

34 Cyc. page 594.

So, even adopting the common law rule which permits the inspection of documents for the purpose of furnishing necessary information, or the statutory rule as above set forth, it would be the privilege of the county of Weld or its agents or representatives to examine the schedules furnished by the respective railroads, especially if the purpose of desiring the examination was to furnish the county with information in connection with any contemplated suit or proceeding.

Section 8 of Chapter 134 of the Session Laws of 1913 provides that

> "Any board of county commissioners of any county in this state being of the opinion that any assessment made by the said Colorado Tax Commision is illegal, erroneous, duplicate or not uniform with the assessment made by the said commission upon other like property similarly situated * * * may file a petition or complaint with the Colorado Tax Commission," etc.

Therefore, if the purpose of the county in desiring the examination of schedules is to determine the rights of the county to file a petition, as referred to in the foregoing section, then certainly the county would be entitled to examine the records of the office of the Colorado Tax Commission, or the schedules filed by the respective railroad companies.

The Session Laws of 1911 which provides that all documents supplied to the Commission shall be considered private documents, does not apply to schedules.

Section 17, page 619 of the Session Laws of 1911, makes a provision for the production of documents by corporations, but the documents provided for in this section do not include schedules; they include private documents of the corporations.

Section 22, which provides that the information obtained through the examination of these private documents shall not be divulged by the Tax Commission, does not apply to schedules.

We are therefore of the opinion that if the purpose of the representatives of Weld County in demanding an inspection of these schedules is to advise them whether or not they have any complaint to make with reference to the valuation of the railroad companies' property, it is the duty of the Tax Commission to permit such inspection.

Very truly yours,

NORTON MONTGOMERY,
Assistant Attorney General.

(September 26, 1914.)

Those properly registered before the primary election, but failing to vote thereat, do not by such failure lose their registration.

Hon. L. A. Hafer,
County Clerk,
Georgetown, Colo.

Dear Sir: Confirming my telephone advice to you in regard to the necessity of re-registering by a voter who has failed to vote at the primary election, I beg to say that, in my opinion, it is not necessary for a voter who has been duly registered before the primary election but failed to vote at the same to register again in order to vote at the general election.

For precincts lying within cities of over five thousand population, the act of 1911, found in Session Laws 1911, pages 336 to 369 inclusive, contains provisions which clearly indicate that re-registration is not necessary under the circumstances referred to within precincts of that class. Reference is made to Section 7 (page 345) where it is declared to be the purpose and intent of the act that an elector once registered shall not be required to register again for a primary election unless he fails to vote at the general election preceding; also note Section 12b of the act which provides for the purging of registration by the county clerk for failure to vote at the general election, no such provision being made in case of failure to vote at the primary election.

As regards precincts outside of cities of over five thousand population, I wish to call your attention to Section 39 of the registration act already cited and to the amendment thereof as it appears in Session Laws of 1913 on pages 265 and 266. Toward the end of the section, you will notice that the registration board is directed in such precincts to sit on certain days and likewise that such registration shall apply for both the primary and the general election.

In view of the evident intent of our election laws to facilitate the expression of a voter's preference without undue restrictions, I consider that the county clerk ought to retain the full primary registration for use at the general election without removing therefrom any names for any cause whatever.

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(September 30, 1914.)

Claims arising from necessary surgical and medical attendance given members of the militia who contracted illness or sustained wounds in the line of duty while in active service 1913-14 are properly paid out of the insurrection fund of 1914.

The Honorable, The State Auditing Board,
Denver, Colorado.

Gentlemen: There was referred to me some time ago a pay roll from the Military Department commonly known as the Sanitary Corps pay roll. It includes the following vouchers.

(Here followed a description of certain vouchers.)

I beg to advise that I have made an investigation and I am informed by the Military Department of this state that all of the enlisted men above mentioned were either seriously sick or badly wounded through their services in the militia of this state while in the field. It was reported to me that Miller, Barber, Burleigh, McCollar, Purcell and Sauer were wounded by a gun shot, some of these cases being very serious, one having lost an arm, another having lost a leg and one having lost an eye; that Standiford, Nordstrom, Marquardt, Pooley, Doyle, Easton and Browning have been very seriously sick, the sickness being incurred while in the service of the state.

I am informed it was arranged by the Military Department that these men should receive surgical and medical attention by the officers of the Medical Corps and that the vouchers for Captain Schultz and Major Jolley are in payment of services rendered in caring for these men.

I am asked whether or not these vouchers constitute a claim against the state of such a nature that they can be included in the bills now being funded. Without hesitation I say that there is not only a moral but a legal obligation on behalf of the state to pay these bills and it is my judgment that they should be allowed as other items which the board is now passing and be paid out of

the funds realized from the sale of the bonds authorized by the Special Session of the Nineteenth General Assembly.

I remain,

Yours very truly,

FRED FARRAR,
Attorney General.

(September 30, 1914.)

How time is computed in transmitting reports to the State Bank Commissioner under Section 20, Chapter 44, S. L. 1913, p. 121.

Hon. E. E. Drach,
State Bank Commissioner,
Denver, Colorado.

Dear Sir: Your letter of the 29th inst., received, asking our interpretation of the provisions of Section 20, chapter 44 of the Session Laws of 1913,—that is, as to the computation of the time provided for in said section, for transmitting reports after the request of the Bank Commissioner therefor.

This statute is a penal statute and therefore should be liberally construed in favor of the banks and strictly construed against the State. The statute no doubt contemplates that the request made by the Bank Commissioner and the transmission of the reports by the banks shall be by United States mail. The request is not made upon the bank until the bank receives the request. Transmission is made by the bank when the report is deposited in the post office or the United States mail box by the bank.

We will state further, that when you have sent the request by depositing the same in the United States mail the presumption of law is that it will reach the person to whom addressed during the ordinary course of mail. This presumption, however, may be rebutted by showing that the request was not actually so received.

Very truly yours,

NORTON MONTGOMERY,
Assistant Attorney General.

(October 27, 1914.)

Where, through error, both receiving and counting judges have been appointed in precincts not entitled thereto under S. L. 1913, p. 259, both sets of judges should, for greater safety, certify to the returns.

Mr. H. E. Smith,
County Clerk and Recorder,
Canon City, Colorado.

Dear Sir: Your letter of October 21st with reference to judges of election and counting judges received, and in answer thereto, will say:

Section 1 of Chapter 76, page 259 of the Session Laws of 1913, provided that "The board of county commissioners, where the matter of appointing judges of election rests with the county commissioners and the election commission in the City and County of Denver, shall appoint counting judges", etc.

Chapter 127 of the Laws of 1911 provides that in cities over five thousand population, the judges of election shall be appointed by the clerk and recorder.

From a literal reading of the law of 1913 with reference to the appointing of counting judges, it would seem that the only precincts in which the law provides that they are to be appointed is in precincts casting over 300 votes and outside of cities with a population of 5,000 or more. However, inasmuch as two sets of judges have been appointed in your county in towns having a population above 5,000, in order that there might be no question as to the returns made by the election officials, I would suggest that you instruct the judges of election and also the counting judges both to make out and sign the returns.

You also asked, in your letter, under which appointment shall the counting judges act, and in answer thereto, will say that they are to act under the appointment of the board of county commissioners, as that is the only act which has any reference to counting judges.

Yours very truly,

FRED FARRAR,
Attorney General.

By NORTON MONTGOMERY,
Assistant.

(November 7, 1914.)

Where an officer was appointed to office in January and confirmed by the Senate in February, the term beginning in the following July, he was subject to a law which became effective in June of that year whereby the salary of the office was abolished.

Hon. Roady Kenehan,
Auditor of State,
Denver, Colorado.

Dear Sir: I have your favor of this date submitting vouchers Nos. 3245 and 4013, drawn for salary claimed by Rev. J. W. Finkbiner as a member of the State Board of Lunacy Commissioners, and asking my opinion whether warrants can legally be drawn for these vouchers.

By Section 1 of Chapter 227, Session Laws 1907, it is provided that members of boards of control of all institutions supported by the State shall receive as compensation for their services, only actual expenses incurred in the performance of their

duties. This act was approved March 6, 1907, and became effective ninety days therafter, to-wit, June 4, 1907.

We understand, however, that Mr. Finkbiner claims that by reason of having been appointed on the board before this act became effective, he is not affected thereby, but is entitled to salary under the provisions of the act of 1899, which was in effect at the time when he claims to have been appointed.

An examination of the records in the office of the Governor discloses that on January 24, 1907, an executive order was made purporting to appoint Mr. Finkbiner to this position for the full term of six years. There was, on that date, no vacancy upon the State Board of Lunacy Commissioners and Mr. Finkbiner was, in fact, appointed to succeed Commissioner M. Studinski who had, himself, been appointed for the unexpired term of Edward G. Middlekamp which did not expire until July 18, 1907.

Under these circumstances, I am of the opinion that the appointment of Mr. Finkbiner cannot be regarded as complete prior to July 18, 1907, on which date the vacancy occurred which he was appointed to fill. It follows, therefore, that having been appointed at a time when the statute provided, as it has ever since, that members of the State Board of Lunacy Commissioners should receive as compensation only their necessary expenses, Mr. Finkbiner is not entitled to a salary for his services in said office and you would not be justified in drawing warrants for the vouchers in question, which I am returning herewith.

Yours very truly,

FRED FARRAR,
Attorney General.
By FRANK C. WEST,
Assistant.

(November 18, 1914.)

Sections 2226 and 2227, R. S. 1908, and S. L. 1911, pp. 334-335, as to compensation of election officials, examined in relation to one another.

Mr. D. J. Van Bradt,
County Attorney, Morgan County,
Fort Morgan, Colo.

Dear Sir: Your letter of November 12 is at hand, requesting my opinion as to the effect of the act found in Session Laws of 1911, pages 334-5, in its relation to Sections 2226 and 2227 of the Revised Statutes of Colorado, 1908. All these statutes regulate the compensation of election officials.

The act of 1911 expressly amends Section 2226, making certain changes in the compensation. The original section went into effect on June 6, 1877. It is Section 69 of the Election Act of

1877. Section 2227, on the other hand, is a part of the Fee Act passed by the same general assembly, effective on June 22, 1877.

The ordinary rules of statutory construction require that we harmonize Sections 2226 and 2227 with each other if we can. This seems entirely possible as they do not appear to be in necessary conflict. Section 2227, which is the later section, need not be considered as repealing any part of Section 2226, and the incidental definition of the word "day" in Section 2226, may, in my judgment, properly be read into Section 2227.

Each of the two sections cited from the Revised Statutes was originally separate and independent of the other. Each purports to be general in its application.

In the light of the foregoing history of this legislation, it is my opinion that the legislature intended to make the new basis of compensation obligatory in the case of election officials within "cities of the first class and in cities of over 20,000 inhabitants operating under special charters where the pay of the same is not specified in such charters," and to make such new basis wholly optional with the board of county commissioners in all other cases. If the board does not elect to exercise its option by applying the new basis in the prescribed manner to its election officials outside of the cities described, payment must be made according to the law as it existed before the 1911 amendment was enacted.

In arriving at my conclusion, I have carefully considered but cannot approve the contention that the use of the words "outside of such cities" (in the last line on page 334 Session Laws 1913) indicates a legislative intent to restrict the discretion of the county commissioners to such counties as actually contain cities of the classes named. I think such discretion extends to all "counties other than those where city and county lines are identical."

Very truly yours,

FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(November 30, 1914.)

When English-speaking children may be separated in school from others.

Miss Florence Salabar,
Superintendent of Schools,
Durango, Colorado.

Dear Madam: In answer to your inquiry of some time ago in regard to whether or not it is legal to separate the Mexican children in the public schools, particularly in the first, second and third grades, from the other children, I desire to say:

The second subdivision of Section 124, School Laws Annotated, provides that school boards shall have the power to enforce the rules and general regulations of the state superintendent, to fix the course of study, etc. By Section 123, they have also the power to make such by-laws for their own government and for the government of the public schools under their charge as they may deem expedient, not inconsistent with the provisions of this act or the instructions of the state superintendent.

These two sections give school boards wide latitude in regulating the public schools. As a matter of law, if the children are excluded by reason of their race, there is no question that such exclusion is illegal. On the other hand, if the test is one of language, then it is perfectly proper for it is an exercise of the right of the school officials to prescribe the course of study for the best interests of the school.

I have been unable to find any cases right on the point on this subject. It is obliged to rest upon sound basic educational principles and common sense rather than upon precedent.

At Alamosa there has been a Mexican preparatory school established for a number of years. The reason for this was the fact that the Spanish speaking children and the children of English speaking parents were both handicapped by reason of the Mexican or Spanish speaking children not being able to understand the teacher and the extra time the teacher had to devote to the retarded pupils. The establishment of this separate school has proved a success in every way, although it provoked a great deal of discussion recently and culminated in a suit brought by some of the parents of the Spanish speaking pupils. After a great deal of testimony was taken on both sides of the question, the court, in its opinion said: "The evidence of educators adduced at the trial is as an unit in favor of the separate school for children of another language until they acquire sufficient knowledge of the language in which the school is being taught to enable them to understand what the teacher may say," etc. It seems from this that the proper test would be, as I have indicated above, that if it is a race question, the Mexicans must not be discriminated against, but if it is a language test and, in the judgment of the school authorities, for the advancement of the educational interests of the children, the children should be separated until they had acquired a working knowledge of the English language, such a separation would be legal. It is a matter purely for the school authorities within these limitations. Any other conclusion would hamper the authorities and retard the development of both Mexican and English speaking children.

Hoping this letter will settle your difficulty, I am,

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

(December 7, 1914.)

Manner of assessing state land and improvements thereon. Legality and status of tax sales.

Mr. Tom Burnside,
County Treasurer, Elbert County,
Kiowa, Colorado.

Dear Sir: I have your letter of December 4th, wherein you make inquiry as to whether State lands sold under contract are assessable property and wherein you state that there have been a number of tax sales in your county of such lands, and you desire to know whether such sales are legal.

By the terms of Section 5540, Revised Statutes, 1908, the equity in state lands sold under contract is assessable and subject to taxation. Under that section, the land was to have been assessed on the amount which the purchaser had paid to the State. This section was amended by Section 7 of the Session Laws 1913, page 527, to read as follows:

> "That all equities in state and school lands purchased under contract taken from the state shall, during the life of the contract, be taxed at their full cash value and that all improvements thereon be taxed at their full cash value."

By the same section the term "improvements" is defined as including all buildings, water rights, structures, fixtures and fences erected upon or affixed to the land, whether title has been acquired to said land or not.

Section 5192, Revised Statutes 1908, also provides that all state land sold under contract is subject to taxation. However, by the terms of Section 5193, all state land which reverts to the state by virtue of the purchaser having forfeited same, reverts to the state free and clear from all tax liens. Therefore, your tax sales are perfectly legal, but the holder of the tax certificate is liable to be deprived of his interest therein by the purchaser from the state forfeiting his contract. When you issue tax deeds on such lands, you should insert a clause in your deed that same is sold subject to all rights or interests which the State of Colorado may now have or may hereafter acquire therein.

Yours very truly,

FRED FARRAR,
Attorney General.
By WENDELL STEPHENS,
Assistant.

(December 31, 1914.)

Under existing statutes the royalties from leased coal lands belonging to the school fund can not be paid into the Public School Permanent Fund instead of the Public School Income Fund, as at present.

His Excellency,
Elias M. Ammons,
Governor of Colorado.

My dear Governor: From time to time you have expressed yourself to me emphatically against the old established practice of using up the royalties from the leased coal lands belonging to the State School Fund.

The practice has been to credit these royalties to the Public School *Income* Fund. The Income Fund, under the statutes, is periodically apportioned among the various school districts of the state (Revised Statutes 1908, Sections 5887-5891), and expended for district purposes.

You have invariably contended that, inasmuch as the coal lands are gradually being exhausted, this amounts to a piecemeal disposal of the lands themselves, and that the royalties ought therefore to go into the Public School *Permanent* Fund as a part of the perpetual endowment of our public school system, only the interest thereof to be disbursed for current school purposes.

In principle, I think you are undoubtedly right.

After a careful examination of the statutes, particularly those relating to the state board of land commissioners (Revised Statutes 1908, Sections 5161-5218), I am compelled to say, as I have already informed you verbally, that at the present time there seems to be no legal way of getting the coal land royalties into the Permanent Fund. To accomplish this result, new legislation is needed. The general assembly has the power of enacting appropriate laws by which the plan could be realized providing for the payment of all coal royalties from leased school lands into the Permanent Fund, subject, perhaps, to the deduction of a certain percentage thereof to cover the expenses of the necessary administration.

What I have said applies not only to coal lands. It applies to all leased school lands where the rental consists of royalties upon the production therefrom, whether "precious metals, coal, iron, oil or other mineral products" (Revised Statutes, 1908, Section 5213). The same principle might, of course, be extended to other state lands than public school lands proper.

I approve most heartily of your intimation that you will probably make a recommendation for the necessary legislation in your message to the general assembly.

Very truly yours,
FRED FARRAR,
Attorney General.
By FRANCIS E. BOUCK,
Deputy.

(December 31, 1914.)
Rights of druggists under local option law.

Dr. F. E. McKeeby,
Olney Springs,
Colorado.

Dear Sir: I am in receipt of your letter of recent date in which you ask several questions on the local option law, and in reply, will state:

First: You inquire as to whether a druggist can carry in stock alcohol, whiskey and other liquors to be dispensed strictly on doctors' prescriptions, said prescriptions to contain enough drugs to prohibit the mixture being used as a beverage. Our answer to this is in the affirmative, for by Section 4107, Revised Statutes of Colorado, 1908, it is provided that a regular licensed pharmacist can dispense liquor upon a written prescription, issued, signed and dated by a physician in active practice for exclusively medicinal purposes and said prescription to be used but once.

Second: Your next question is as to whether or not you can dispense pure alcohol to be used for bathing purposes. There is a diversity of opinion as to whether or not alcohol in its pure state is an intoxicating liquor. It is held in some states that it is and in some that it is not. However, the circumstances of the particular sale and the manner and purpose of it and the character of the purchaser will go a long way toward determining whether or not it can be dispensed upon prescription. No doubt, a druggist could sell alcohol to a scientist to be used in preserving specimens, while, on the other hand, it would be a direct violation of the law for a druggist to sell it to a saloon keeper or to some intoxicated person. Our conclusion, therefore, is that unless you know that this alcohol is to be used for bathing purposes, it would not be wise for you to sell it.

Third: You ask whether or not, as a licensed physician, you can dispense pure alcohol or any other liquors to your own patients. Our statute does not make an exception in behalf of a physician. It only says that druggists may dispense on a written prescription of a physician, etc. In accordance with this, it would be better for you to write prescriptions for your patients to be filled at a drug store.

Fourth: Your next question is as to whether or not you, as a licensed physician, can carry liquors to be used in putting up medicines for your own patients under the same restrictions as number one. I take it from this that you mean to dispense liquors in your drug store for medicinal purposes upon written prescriptions made out by yourself as a regular practicing physician. I do not think that you are justified in doing this. It can be seen that a druggist who is also a physician could very easily carry

on a liquor traffic by writing prescriptions and selling liquor upon such prescriptions in his own drug store. I would suggest to you that, in order to keep within the meaning and spirit of the local option law, you should not write your prescriptions and fill them in your own drug store.

Yours very truly,

FRED FARRAR,
Attorney General.
By CLEMENT F. CROWLEY,
Assistant.

Report and Opinion in re The Myron Stratton Home, submitted to the 19th General Assembly on March 31, 1913, pursuant to S. J. R. No. 2.

To the Honorable the Senate and House of Representatives of the Nineteenth General Assembly:

Pursuant to S. J. R. No. 2, I beg to advise that I have undertaken an investigation of that institution known as The Myron Stratton Home, and I beg herewith to submit the following report:

Upon receipt of the resolution, I commenced an investigation and learned that at least two official investigations had been made within the past few years, the first being by a committee appointed by the Sixteenth General Assembly and the second by my predecessor in office, The Honorable Benjamin Griffith, this last investigation having been made as shown by his report to the Governor under date of October 5th, 1912.

I made what investigation was possible from the various records and reports which were available here in Denver and then proceeded to Colorado Springs. There I was given access to all the books and records of the Stratton Estate. I also interviewed a number of people who had or were presumed to have knowledge of the affairs of this estate, both here and at Colorado Springs, and I made a personal examination of a portion of the properties, particularly of the site upon which the home is now building.

In view of the fact that the reports of the executors of the will of the late W. S. Stratton are a matter of record in the County Court at Colorado Springs, and other reports and orders a matter of record in the District Court in and for El Paso County, and that the trustees of this home had, from time to time published the reports made by an accountant employed to audit their books, it was apparent that the examination which was needed was not an audit of the books and records in a technical sense, but rather an examination leading to the cause of the non-fulfillment of the trust imposed upon the persons in charge of the estate. My conclusions in this regard were borne out by a preliminary examination of the books and records, and I decided that

no discrepancies would appear from an audit of the books. All records pertaining to this estate seem to have been very carefully and accurately kept. It is needless to say that they are voluminous, and an audit in the proper sense of the word would have taken, in my judgment, a period of several months. So I assumed that the books and records were correct and proceeded with my investigation for the purpose of determining the legality of expenditures made and the occasion for the delay and also to find a remedy for that condition.

In order that I may be understood, a review of the history of the Stratton Estate is necessary.

Winfield S. Stratton died in Colorado Springs, September 14, 1902, leaving an estate which was appraised by J. A. Elston, an officer of the State of Colorado, for the purpose of determining the amount of inheritance tax due the State, at $6,307,166.36.

This property is all covered by and included within the terms of a will made by the late Winfield S. Stratton, which nominated and appointed Carl S. Chamberlain, Dr. D. H. Rice and Tyson S. Dines its executors.

The will bequeathed to Carl S. Chamberlain certain personal property which included household furniture, jewelry, library and similar items of personal property belonging to the deceased. It then provided for eleven bequests to various persons, the total amount of which is $485,000.00 and included within which was a bequest of fifty thousand dollars to I. Harry Stratton, the son of the late Winfield S. Stratton. This amount also included $25,000.00 bequeathed to the institute for the education of the mute and blind at Colorado Springs.

The will then provided that the remainder of the estate, after the payment of the bequests and all legal and just costs, charges and expenses arising from the collection, preservation, settlement and distribution of the estate should be paid over to Dr. D. H. Rice, Moses Hallett and Tyson S. Dines in trust for the endowment and maintenance of a home to be known as The Myron Stratton Home, which was to be a corporation, organized under the laws of the State of Colorado, to be maintained as a

"Free home for poor persons who are without means of support and who are physically unable by reason of old age, youth, sickness or other infirmity to earn a livelihood and who are not, by reason of disease, insanity, gross indecency or immorality, unfit to associate with worthy persons of the condition of life above named. The inmates of said home shall be selected by the Board of Trustees of said corporation, first, from poor persons of the condition above stated who are actual residents of the County of El Paso in the State of Colorado, and second, from any poor persons of the condition above stated who are, at the time of their selection, actual residents of any other county in the State of Colorado, who shall be admitted thereto in the order of priority of their application up to the full capacity of said home to accom-

modate and provide for them without serious inconvenience to persons who shall, at the time of their application, be inmates of said home".

The will provided further:

"It is my especial desire and command that the inmates of said home shall not be clothed and fed as paupers usually are at public expense, but that they shall be decently and comfortably clothed and amply provided with good and wholesome food, and with the necessary medicines, medical attendance, care and nursing to protect their health and insure their comfort, and that no inmate of said home shall be constrained against his or her will to perform any manual service for any inmate of said home not related to him or her by blood or marriage, nor for any officer or employee of said home; nor shall any such inmates be constrained to perform any manual labor when physically unable to do so."

The will also provides that a suitable sum not exceeding One Million Dollars, out of the bequest should be

"Expended in purchasing suitable grounds and a site for said home within the County of El Paso and State of Colorado, and in erecting, furnishing and equipping the necessary buildings for the use of the inmates of said home and for the maintenance of careful supervision over the erection of said buildings and improvement and beautification of the grounds."

All of the balance and remainder of the bequest is to be invested in good and safe interest-bearing securities, the proceeds therefrom to be expended under the direction of the trustees of the corporation in accordance with the by-laws of said corporation, for the maintenance of said home, including suitable compensation to said trustees, all of which shall be subject to the inspection and approval of the District Court of El Paso County, Colorado, or to the inspection and approval of such auditing committee or board of inspection as may be provided for under the by-laws of the corporation.

This will was duly presented for probate to the County Court of El Paso County, but the proving thereof was contested by I. Harry Stratton, the son of the late Winfield S. Stratton and one of the legatees before mentioned.

The executors of the will could not qualify until the will had been admitted to probate. There were therefore appointed, after considerable litigation which included an appeal from the County to the District Court, three administrators to collect. I am informed that Carl S. Chamberlain, a nephew of the late Winfield S. Stratton, one of the executors named in the will, had not at that time attained his majority and therefore could not qualify as an administrator. So the Court appointed the other two executors named, that is, Dr. D. H. Rice and Tyson S. Dines, together with one A. G. Sharp, administrators to collect. It was their duty to manage and preserve the estate pending the decision

of the contest directed against the will. It must be remembered that these three gentlemen were not, at that time, qualified to execute the will, nor did they have the powers given under the will to the executors; in other words, the property in the estate did not vest in the executors pursuant to the terms of the will.

I. Harry Stratton, the contestor, was represented by numerous and able counsel, one of whom was the late Edward O. Wolcott. Inasmuch as the executors could not have the estate, they were compelled to defend this contest by such means as were available. They therefore entered into arrangements with numerous attorneys for the defense of this contest, the compensation to be paid to these attorneys contingent upon the success of the defense. The contest involved practically all of the estate, and it was, of course, essential in order to preserve the will, that a vigorous defense be made to the contest. To the sums of money paid for attorneys' fees, reference will be made later in this report. The contest proceeded for a period of about nine months, at which time it was settled by a compromise effected between the executors and the contestor in which the contestor was paid the sum of $350,000.00.

The will was then admitted to probate and the second set of officers, that is to say, the executors named in the will, qualified. These executors, as I have stated, were Dr. D. H. Rice, Tyson S. Dines and Carl S. Chamberlain. According to the reports, the executors received the estate on the 24th of April, 1903, and the Court allowed the administrators to collect, for their services, the sum of $166,521.73. This was paid largely in two installments, the first being June 1, 1904, and the second in December, 1904, with interest from the date upon which it was allowed in the sum of $18,685.94, making the total amount in principal and interest paid to the administrators to collect, the sum of $185,207.67, or approximately 2.64% of the total value of the estate as found by the Inheritance Tax Appraiser.

The administration of the estate by the executors then commenced. There were many claims filed. It is only fair to say that many of these claims were entirely legitimate, and according to the report made to me by the attorneys for this estate, the total amount of claims filed and allowed without contest was $141,326.23, but unfortunately, the death of Mr. Stratton was the signal for a swarm of vampires to attempt the process of mulcting his estate, and during the course of the administration, the total amount of claims and demands filed against the estate, including those which were allowed without contest, amounted to $23,709,120.00, exclusive of the inheritance tax and other taxes. Various suits, some of which involved more than the total value of the estate, were commenced and litigated. In some instances judgments were found against the estate, but in most of them the estate was, on the whole, successful. Three of these claims are of particular interest because of the amount demanded. These are:

First, the claim of one Popejoy for an amount approximating $8,000,000.00; this was, after some litigation, compromised by the payment of $3,000.00; The Stratton Independence Company, Limited, against the Stratton Estate, tried in the United States Courts, in which the amount demanded was $6,000,000.00, and the Venture Corporation against the Stratton Estate, in which the demand was $2,040,000.00, both of which were ultimately decided in favor of the estate, The Stratton Independence, Limited, suit having been appealed from the United States Circuit Court to the United States Circuit Court of Appeals, and from there an unsuccessful effort was made by the plaintiff to get into the United States Supreme Court by process of certiorari.

Of the total amount of these claims against the estate, there remain at present in process of litigation, demands to the amount of $539,883.00.

In order that an understanding may be reached concerning the nature of the administration, the property of the estate should be briefly referred to. In the first place, there is the Stratton Estate, itself, or, as it is now termed, The Myron Stratton Home, which of itself owns a vast amount of property. For the sake of this report, I will call it the estate. Among the properties which it owns I might refer to the Coronado Building, on the corner of 15th and Stout streets in the city of Denver, and the Brown Palace Hotel in the city of Denver. It also owns various tracts in or near the city of Colorado Springs, including the property known as the Broadmoor estate, which was purchased as a site for The Myron Stratton Home. There are other properties which might be specifically referred to, but I think it scarcely necessary for the purpose of this report.

This estate owns all of the stock of the International Realty Company excepting four shares out of a total of one million shares, the four shares being held by some of the officers of the Stratton Home in order to have sufficient stockholders to maintain the corporation; in other words, the Stratton Estate owns all of the stock of the International Realty Company. The holdings of this company are so extensive as to make it impossible to give a detailed report unless an examination, such as I have mentioned at the beginning of this report, were made. Suffice it to say that these shares of stock were appraised by Judge Elston, for the purpose of fixing the inheritance tax, at $1,851,835.12, and the probability is that that company is worth considerable more today than it was in 1902 when this appraisement was made. This company has many ramifications, but some of the property owned by it is worthy of note. First, it owns the land at 17th and Stout streets in the city of Denver upon which the First National Bank Building is erected. This land is leased to the owners of the building for a period of ninety-nine years upon a graduated scale of rental, increasing by decades up to the end of thirty years, at which time the rental is to be fixed by arbitration in the event

that the parties cannot agree, but is, in no event, to be less than $20,000.00 nor more than $40,000.00 per year, with all taxes to be paid by the lessee. Secondly, this company owns eleven lots on the corner of 17th and Welton streets in the city of Denver, this being the north corner according to the street intersection. This is also leased for a term of ninety-nine years upon a graduated scale of rental. The present building which is erected upon it is, as I recall it, two stories in height, and the owners of the building are under contract to erect a ten-story building within ten years. After nineteen years the rental price is subject to arbitration, and is not to be less than $25,000.00 nor more than $35,000.00 per year with all taxes paid. This company also owns the building in Colorado Springs known as the Mining Exchange Building, and various other pieces of property at different places.

The next corporation owned by the estate is The Colorado Springs & Interurban Street Railway Company. The estate owns all of the stock of this company in the same manner as it owns the stock of The International Realty Company. In addition thereto the estate and the realty company together own 770 out of 1,500 $1,000.00 bonds of this railroad company, the total bond issue being $1,500,000.00.

The third large corporation owned by the estate is The Stratton-Cripple Creek Mining & Development Company. This company owns about 515 acres included within mining claims in the Cripple Creek District, most of these claims being low-grade properties.

There are also a number of other mining corporations of which the estate owns either all or a controlling interest of the stock, and many other corporations of which the estate owns less than a controlling interest of stock. The controlled companies include, in addition to those which I have specified:

The Arcadia Consolidated Mining Company.

The Granite Hill Mining & Milling Company.

The Matoa Gold Mining Company.

The Reno Mining & Milling Company.

The Sacramento Gold Mining & Milling Company.

The Star King Gold Mining Company and

The Zenobia Gold Mining Company.

These last mentioned companies own approximately one hundred acres of mining land in the Cripple Creek District.

Comparatively little of the property belonging to the estate at its inception has been sold; the principal properties disposed of are the lots to the south of the Metropole Hotel and the Broadway Theater, bordering on Broadway, 17th avenue and Lincoln street in the city of Denver; a piece of property used as a ball park at Colorado Springs, and certain stock in The Colorado Title & Trust Company of Colorado Springs, The Exchange National Bank, The

First National Bank of Cripple Creek, and The First National Bank of Colorado Springs.

This bank stock and the last mentioned property in Denver, which is commonly known as the Tabor property, was sold for the purpose of realizing sufficient funds to pay the amount allowed I. Harry Stratton in settlement of his contest. With these, and a few other exceptions, the estate today is practically as Mr. Stratton left it, with the exception of numerous improvements.

As a business proposition, this estate has been well managed. The total amount which has been paid out in administrators' fees, executors' fees, attorneys' fees, legacies, judgments, inheritance tax and other and similar expenses, is approximately $2,000,000.00, but the estate today is probably worth not less than $7,300,000.00; in other words, $1,000,00.00 more than when Mr. Stratton left it. The income from these properties has been increased, although if measured by the returns which are expected from small properties, these incomes are not as large as they might be. The mining property owned by the Stratton-Cripple Creek Mining & Development Company has not paid reasonable dividends. The Brown Palace Hotel was acquired under foreclosure proceedings by the estate, and it has not paid well. There has been, in connection with this hotel, considerable litigation, one suit arising out of this transaction now being in the courts; others have been tried and settled. The properties belonging to the International Realty Company have paid, on the whole, fairly well, and the Street Railroad Company has paid fairly well, and it is out of the earnings of the estate, except for the properties sold, which I have mentioned, that the disbursements have been made.

Resuming again the history of the transactions, I beg leave to report that on January 1st, 1909, the major portion of the litigation which involved the estate had been settled, and at that time the executors turned over to the trustees, or the third set of officers, the bulk of the estate, retaining 370 of the $1,000.00 bonds of the Street Railroad Company with which to pay any judgments which might ultimately be rendered against them in the litigation which is still pending. The executors filed their report and secured the approval thereof and the direction to make this transfer, and they were allowed, for their services as executors, from the 24th day of April, 1903, to the 1st day of January, 1909, the sum of $207,684.00.

Now come the trustees—those named in the will were Dr. D. H. Rice, Tyson S. Dines and Moses Hallett, but Judge Hallett declined to accept the trusteeship and Mr. William Lennox of Colorado Springs was appointed by the District Court in and for El Paso County in lieu of Judge Hallett. The trustees in course of time incorporated a company known as The Myron Stratton Home, which is the ultimate designation of the estate under the terms of the will, and, as trustees, these gentlemen are allowed, by order of court, the following salaries: D. H. Rice, president,

$7,000.00 per year; Tyson S. Dines, $4,000.00 per year; William Lennox, $4,000.00 per year. The clerical work of the estate, I believe from its inception, has been in charge of Mr. William Lloyd, who was, prior to Mr. Stratton's death, his personal or private secretary. Mr. Lloyd is secretary of The Myron Stratton Home, and receives a salary of $6,000.00 per year. Dr. Rice, as president of the Home, is also president of the holding companies, and receives as president of the Street Railroad Company the additional sum of $1,800.00 per year; he receives no additional salary for his position as president of the Realty Company and the Mining Company. Mr. Lloyd is secretary of each of these three subsidiary corporations, but receives no additional salary.

Returning now to the fees paid for the defense of litigation, let me first take up the defense of the contest made to the proving of the will. As I have already stated, various attorneys were employed upon a contingent basis, by that I mean that they were to be paid in the event that they were successful in the defense of the contest and saved the estate. The amount paid them was, I am informed, less than the amount which was asked, but even at that the fees paid exceed $150,000.00 for this one defense alone. Of course, it is only fair to take into consideration that the whole estate was at stake and that estate was measured not in thousands of dollars, but in millions, and that had the will contest, which was being vigorously pushed by able counsel, succeeded, there would have been no estate with which to build The Myron Stratton Home. I have mentioned only one of the attorneys who represented I. Harry Stratton, but in addition to Senator Wolcott and his firm, there were a number of others. The attorneys for the defense were ten or more in number. These payments were not made immediately, and interest was allowed on each claim.

The next items of heavy expense centered about the suits brought by the Stratton Independence Limited Company and the Venture Corporation, the first of which, as I have shown you, involved $6,000,000.00 and the second $2,040,000.00. In the defense of these suits, attorneys' fees and other legal expenses incident to the suits cost $83,124.63. It is not necessary to refer to numerous other expenses which were incurred in the litigation of the $23,709,120.00 of claims which were filed against the estate. Suffice it to say that the legal expense, by that I mean attorneys' fees, court costs, witness fees, etc., of the executors from the 24th day of April, 1903, to the 18th day of December, 1912, amounted to $288,742.02. This, of course, does not include the executors' nor administrators' fees.

I beg to advise that all of the transactions of the estate seem to have been done by the gentlemen in charge with the desire to save and conserve the estate, and the payments which have been made, including the allowance of the fees to the administrators, the fees to the executors, the legal expenses and all other things pertaining to the transaction of the business of the estate, have been reported and duly approved by the court.

In answer to my criticism that the executors or their successors, the trustees, should have disposed of a portion of the assets of the estate and converted them into cash with which to build the home, I was informed that these properties had been and now are on the market for sale and that repeated attempts have been made to sell, particularly the mining property and the street railroad system, but that no offer had been received which the trustees felt amounted to the real value of these properties, and that no sale could have been effected for the reasonable value of the properties owing to the unfavorable financial and commercial conditions. Some of the persons whom I interviewed suggested that the trustees were asking more than the properties were reasonably worth. I am unable to make a conclusion of this point, for the reason that it would entail an examination and investigation of such a nature as the time would not permit.

The foregoing gives you an idea of the condition of the estate as my inspection disclosed it. It was the obvious desire on the part of the General Assembly of this State that such proceedings should be undertaken as would bring about the execution of the trust. In this work, I made a number of trips to Colorado Springs. I interviewed a great many people and made the investigation which is disclosed by the matters preceding. I arrived at the conclusion that the trustees of the estate, two of whom had been connected with the estate from its inception, first as administrators to collect and then as executors and now as trustees of the home, had become, in so far as the disposition of the assets of the estate was concerned for the purpose of fulfilling the trust, ultra conservative. Possibly the injustice of many of the demands made upon the estate had tended to bring about this condition. Further than that, they apparently are men inclined to a conservative viewpoint in any event, and they were fortified by orders of Court approving all of the payments which they had made and all the transactions done by them. It is obvious that they were not fearful of litigation. The estate had the means with which to defend litigation, and they had conclusively shown that while they might be slow in constructing the home, they were willing to spend money for attorneys. The State of Colorado, in my judgment, could ill afford litigation from two standpoints; first, the expense, and second, the further fact that litigation begun by the State at this time would be of uncertain outcome and might, instead of bringing about the fulfillment of the trust, simply be used as an excuse for further delay. I therefore arrived at the conclusion that if the fulfillment of the trust could be brought about by other means than litigation, it was highly desirable. My investigation showed that $1,000,000.00 of the estate was to be devoted to the site, building and equipment of the home. The trustees had bought the Broadmoor property, which consists of about 2,000 acres of land and certain lots in the Broadmoor townsite. These had cost about $350,000.00, but all that sum cannot be charged to the $1,000,000.00 building account. All of

this property is not necessary for the site of the home, but I was informed and believe that it was necessary to secure certain water rights which belonged to this Broadmoor estate and which I was informed could only be acquired by purchasing the whole estate. It is fair to presume that at least $150,000.00 will be realized from the sale of lots in the Broadmoor townsite and possibly from part of the other portion of the estate, which will reduce the charge for land and the appurtenant water rights to about $200,000.00.

I found that the site for the home had been selected and a landscape plan outlined; that a reservoir had been built at a cost of approximately $38,000.00 and a pipe line for the domestic water at a cost of about $20,000.00. During the month of January, and after I began my investigation, the trustees let a contract for the first unit of the home. This contract calls for the construction of ten cottages for the housing of old people, two dormitories for children and a cottage for the superintendent, with the necessary heating plants. These buildings are to be completed according to the contract, by the first of November, 1913, the contract price, $147,000.00, of course not including the cost of furnishing these buildings. This was a start, but only a start, in the fulfillment of the trust. These buildings would house a comparatively small number of people. It is hard to say definitely, but possibly seventy-five would be as many as could conveniently be taken care of. However, it was the commencing of the plan and that plan is rather an ambitious one. It calls for a village with facilities for caring for and educating children, giving them vocational training, and for the care of old people, for the conduct of a dairy and a farm not only to supply food to the home, but also for the purpose of instruction in these lines of work, and the trustees contended that experience was necessary in order to build permanently, that they must know upon what lines they should expand, and that the plan called not for hasty but for mature consideration in order that they might meet all contingencies which might arise in the future. They argued particularly that it was difficult to plan very far in advance for children, but that the home would simply have to grow as its needs demanded and it was not intended, under the present condition of the estate, to add to this contract until such a time as their experience had taught that which might be needed, and in any event, this plan did not contemplate the erection of another unit for possibly two years.

I therefore made it my object to induce these trustees to see the other side of the trust which they are appointed to fulfill. There was no question but that they were, from a business standpoint, conducting the estate well. They had made money and aside from heavy fees paid to themselves and to attorneys, the estate had been conservatively managed and it became my duty to show to them, if possible, that their trust was in its nature a dual one and that in addition to these matters, they had a duty to perform to the people of the State of Colorado. They argued upon the ground that an enlargement of the plan at this time

would cost more money than they had in sight from the revenues, particularly in view of the fact that these buildings had to be equipped and furnished and that further facilities for water were necessary. But after several conferences, I succeeded, possibly not in convincing these gentlemen that they should proceed, but rather in persuading them to proceed, with the result that they gave me a letter, signed by each of them, which is as follows:

"March 11, 1913.

Hon. Frederick Farrar, Attorney General of the State of Colorado, Denver, Colorado.

Dear Sir—Pursuant to our several conferences with you in relation to the administration of the affairs of The Myron Stratton Home and of the Stratton Estate, and confirming our oral assurances to you, we hereby agree to undertake to increase the capacity of The Myron Stratton Home to approximately double the capacity of the buildings now under contract. And to proceed as expeditiously as practicable with the preparation of the necessary plans and specifications, the advertising for bids, the execution of the necessary contracts in relation thereto and with the building operations thereunder, so that the buildings now under contract and the others hereby contemplated shall all be completed and ready for occupancy as soon as practicable.

Yours respectfully,

D. H. Rice,
Wm. Lennox,
Tyson S. Dines,
Trustees."

In addition to this letter, I have the assurance of these gentlemen that they will proceed without any technicalities which might be read into this letter, to the construction of this second contract. I have left to their discretion the determination of what buildings should be erected, but it is understood that the buildings to be covered by the second contract shall largely be devoted to the care of old people, leaving the trustees free to work out the needs for the care and education of the children.

It is my intention to follow this matter carefully and see that the second contract is entered into and performed. Its purpose is to double the capacity. I did not require that they should double the number of buildings, but double the capacity. The plans and specifications are to be prepared at once and contracts let without delay, and the understanding is that this contract shall be pushed to completion with all practicable speed and its completion should follow in a short time the completion of the first contract.

It is my judgment that this is the best result, taking everything into consideration, that could be brought about at this time. It has saved litigation which would be expensive to the State, it has saved also the expense of such litigation to the Stratton Home.

and thereby saved that much more for the people who will ultimately be the inmates of that home, and it has brought about the construction of a sufficient proportion of the home to justify the reasonable conclusion that the trust will be performed.

I am advised that an additional reservoir is imperative, that it may cost something like $50,000.00; that possibly need not be completed at once, but a filter plant which will cost several thousand dollars must be put in at once. Taking these things into consideration, the total expenditure which is a charge against the $1,000,000.00 to be devoted for the purpose of building and equipping the home, is approximately $500,000.00, without taking into consideration the cost of furnishing the buildings and the cost of the additional reservoir; in fact, the amount may be in excess of this sum.

In addition to this, I have the assurance of the trustees of this home that in the event of the sale of certain of the property belonging to the estate which is now under negotiation, and which will, if sold, give them an abundant amount of ready cash, that they will proceed to the construction of the home without delay, in addition to these buildings which are now contemplated, in other words, that the home will be built to completion so far as that can be done at this time.

There seems to be a popular impression that this estate could be forfeited and escheat to the State of Colorado because of the failure of the trustees of the home to build up to this time. I beg to advise that this is not correct. The will did provide that in the event of a lapse of the bequest for the home, or in the event that that bequest should by final judgment or decree of any court of competent jurisdiction, be held to be illegal or void, then in that event the executors should pay over and deliver to the State of Colorado all that portion of the estate which had so lapsed or which had been held to be illegal or void, for charitable purposes. This provision contemplated an entirely different condition from that presented by the facts. The bequest, of course, did not lapse, but vested in the trustees. Neither has it been held to be illegal or void, so that it would be fallacy to argue at this time that the estate might be gained for the State of Colorado. In my judgment, the only things which could be demanded in the event that litigation were commenced would be the performance of the trust, in other words, the building of the home, and if that was refused, the removal of the trustees. I therefore feel that I have gained without litigation all that could have been gained by litigation, assuming that such litigation had resulted successfully for the State.

I beg to advise that I have a great amount of data which goes into detail, and numerous reports, statements of account and things of a similar nature which can not be put into a report of this nature, but which I will gladly submit to your Honorable

Body or to any committee of individuals therefrom if it be of any use.

In conclusion, I beg to ask your consideration of the problems which present themselves to me, and to have your approval of the methods which I adopted and the result thereof.

Respectfully submitted,

FRED FARRAR,
Attorney General.

SYNOPSES OF SOME ADDITIONAL OPINIONS.

(Opinion book 6, p. 422: To Dr. H. A. LaMoure, Sup't, Apr. 30, 1913.)
Women's eight-hour law.

The laundry at a state institution, such as the insane asylum, is within the terms of the Women's Eight-hour Law (S. L. 1913, p. 692).

(Opinion book 6, p. 840: To P. W. O'Brien, Co. Judge, Jan. 8, 1914.)
Change in method of paying county judge's salary.

As to method of paying the judge's salary (but not as to employing clerical assistants at public expense), the new County Judge Salary Act (S. L. 1913, p. 225) applies to present incumbents whose salary is not changed by the act.

(Opinion book 6, p. 892: To W. H. Cofield, Co. Atty., March 14, 1914.)
Assessment of bank stock.

Bank stock assessed by the county assessor under the statute, is assessed as property of the share-holder, though the bank furnishes the information.

The stock is to be assessed at actual value, not merely at par value.

(Opinion book 6, p. 919: To James Dalrymple, Inspr. Coal Mines, Apr. 1, 1914.)
Coroner's jurisdiction when body outside his county.

Section 164 of the Coal Mining Law (S. L. 1913, p. 162) does not empower a coroner to hold an inquest over a dead body not in his county.

(Opinion book, 6, p. 958: To Ho. Rep., 19th Gen. Ass., May 5, 1914.)
Powers of special session as to arbitration laws.

Under the Governor's call for the 1914 special session of the general assembly, the latter may submit the necessary constitutional amendment for authorizing compulsory arbitration legislation, but cannot enact any arbitration law.

(Opinion book 7, p. 7: To M. A. Leddy, State Treas., June 8, 1914.)
Validity of Insurrection Bonds.

The "Insurrection Bonds, Series 1914," issued under Chapter 3, S. L. 1914 (p. 6) are, in all respects, legal.

(Opinion book 7, p. 22: To James B. Pearce, Sec. of State, June 9, 1914.)
Initiative and Referendum.

The provision in the initiative and referendum constitutional amendment (S. L. 1910, pp. 11-14) that an initiated measure must be proposed by a petition signed by at least eight per cent of the legal voters and filed with the secretary of state not less than four months before the election, is jurisdictional and is not affected by the initiative and referendum procedure act (S. L. 1913, p. 310); hence only formal matters can be corrected after the four-month limit is passed.

Section 8 of said law cannot go into effect until the pamphlet method of publication is authorized by constitutional amendment, and Section 7 is probably so closely allied to Section 8 that both will go into effect together.

So far as separable, those parts of the law which are not contingent upon the adoption of such constitutional amendment go into effect unconditionally.

(Opinion book 7, p. 28: To Thomas T. Barnard, Co. Clk., June 13, 1914.)
Political parties; certifying election judges.

Under section 3, "c." of chapter 127, S. L. 1911 (p. 338), the Democratic and the Republican party are the two parties entitled in 1914 to certify names for appointment as election judges at the primary and general elections in cities of more than 5,000 population (except precincts in Denver that cast 300 or more votes at the last preceding general election).

(Note: The Supreme Court of Colorado has since ruled the same way in the case of Clements vs. People, 143 Pac. 834.)

(Opinion book 7, p. 40: To D. C. Beutel, June 25, 1914.)
County road levy.

Section 5792, R. S. 1908, providing that the county commissioners in making the road levy shall set apart a portion thereof to cities and incorporated towns, was repealed by S. L. 1911, p. 575, and the repeal of the latter by S. L. 1913, p. 298, did not revive the original section.

(Opinion book 7, p. 57: To Allen M. Lambright, July 1, 1914.)
Coroner's jurisdiction after one inquest.

The coroner of one county cannot legally hold a second in quest over a body after the coroner of another county has properly held one.

(Opinion book 7, p. 116: To Roady Kenehan, Auditor, Sept. 15, 1914.)
Public Utilities Commission; Civil Service.

The employes of the Public Utilities Commission are not subject to the Civil Service Law.

(Note: The Supreme Court of Colorado has since ruled the same way in the case of Kenehan vs. Murray, September term, 1914.)

(Opinion book 7, p. 135: To M. A. Leddy, State Treas., Sept. 25, 1914.)
School funds; state bonds.

The state treasurer can legally invest school funds in Colorado state bonds, according to his judgment, at not less than par.

(Opinion book 7, p. 137: To L. R. Horn, Co. Clk., Sept. 26, 1914.)
Publishing list of nominations.

Section 2159, R. S. 1908, requiring publication of the list of nominations before the general election, is not repealed by the primary law of 1910.

(Opinion book 7, p. 147: To H. Starbuck, Dept. Dist. Atty., Sept. 30, 1914.)
Proclamations.

Courts take judicial notice of executive proclamations.

(Opinion book 7, p. 149: To Thos. Clark, Oct. 1, 1914.)
Primary election irregularities.

Where persons whose names were printed on the primary ballot without being objected to as provided in the 1910 primary law have been voted upon, the fact that the party assembly at which they were designated was held after the time prescribed by law does not render the resulting nominations illegal.

(Opinion book 7, p. 164: Military State Auditing Bd., Oct. 17, 1914.)
Expenses of Court Martial—how paid.

The legitimate expenses of a general court martial convened after the withdrawal of the militia from active service in the strike zone, are a charge upon the military fund and cannot be paid out of the insurrection fund.

(Opinion book 7, p. 175: To F. A. Sabin, Oct. 26, 1914.)
Ministerial acts on Sunday.

In the absence of a statutory prohibition a ministerial act, such as the filing of an election petition, is valid if voluntarily performed by a public officer on Sunday, but he cannot be compelled to act on that day.

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